

Concordat Between the Department for Work and Pensions and the Scottish Government

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Introduction

1. This Concordat establishes an agreed framework for co-operation between the Department for Work and Pensions¹ (DWP) and the Scottish Government² (SG) on all matters arising from DWP's responsibilities which impact directly or indirectly on the functions of the SG and *vice versa*. The aim is to ensure that the productive relationship between both parties continues and that business is conducted in a smooth and efficient way. It sets out the arrangements for consultation, exchange of information (including the terms on which the information is shared), finance, access to services, reaching agreement and review of relations.
2. It is non-statutory in nature and is not intended to be legally binding or to constrain the freedom of either the SG or DWP to operate in areas for which they are responsible. However, both the SG and DWP agree to honour the principles set out in this Concordat.
3. It follows the principles set out in the Memorandum of Understanding³ (MoU) between the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland, which underlie the working relationships between the UK Government and the devolved administrations⁴. DWP and SG will implement the practices set out in the MOU and will co-operate to achieve its aims.

Working Inter-governmentally

4. The day to day interaction of reserved and devolved responsibilities requires DWP and the SG to continue to work inter-governmentally on a wide range of matters, see examples at **Annex A**. Since the Smith Commission and subsequent Scotland Act 2016, significant work has been undertaken by DWP and the SG to deepen and strengthen the existing relationship and work towards ensuring a safe and secure transition of powers and a seamless level of service to people in receipt of benefits.
5. In broad terms, Scottish Ministers hold responsibility for those matters not reserved to the UK Parliament as set out in Schedule 5 to the Scotland Act 1998. The Scotland Act 2016 introduced exceptions to the reservations on social security schemes and employment support. This devolved to the Scottish Parliament (SP) legislative competence over employment support for disabled people and people at risk of long-term unemployment as well as legislative competence to make provision for a range of social security benefits including powers to create new benefits.

Communication, consultation and liaison

¹ References to the Department for Work and Pensions include DWP Ministers and their officials, the Department's businesses including Job Centre Plus and the Pensions Disability and Carers Service, and its sponsored bodies.

² References to the Scottish Government include Scottish Ministers, their agencies (including Social Security Scotland) and their officials.

³ Memorandum of Understanding and Supplementary Agreements on Devolution between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee

⁴ The MoU is subject to review following the decision of the Joint Ministerial Committee Plenary on 14 March 2018. Any reference to the MoU throughout this concordat should therefore be read as a reference to the MoU as amended from time to time.

6. DWP and the SG are committed to the principle of good communications with each other and will alert each other as soon as practicable through the appropriate forums (in confidence, where appropriate) to proposals for new policy initiatives or programmes, and changes to existing policies or service delivery where there is a direct or indirect impact on, or interaction with, the other's areas of responsibility. To help achieve this, where appropriate, the SG and DWP may agree to be part of each other's governance and oversight mechanisms (e.g. programme boards and joint working groups). The aim is to ensure that, as far as possible, each administration is informed of, or consulted, on proposals for change in sufficient time for them to be evaluated, commented upon and for those comments to be considered.
7. They will also, where appropriate, establish arrangements for policies and operational areas for which responsibility is shared to be drawn up and developed jointly between the administrations.
8. To support and underpin this Concordat there are a number of Service Level Agreements (SLAs) and Working Level Agreements (WLAs), which set out the specific working relationships in greater detail. Nothing in this Concordat affects the relations between both parties that are regulated by an SLA or WLA.
9. DWP and the SG will also answer questions and enquiries from the other in accordance with the provisions in the MoU and any agreements between them on common working arrangements.
10. Liaison arrangements will be taken forward by officials in DWP and the SG who will develop the necessary bi-lateral arrangements. On general points, or where there is no established link, the initial contact points will be the DWP Devolution Policy Team and the SG UK Relations Team.

Legislation

11. Devolution Guidance Note 10⁵ sets out the guidance to Whitehall Departments for handling primary legislation affecting Scotland.
12. DWP and the SG confirm their commitment to work together to fully consider the implications for the other of proposals by either of them to amend legislation, well in advance of the amending legislation being introduced into parliament. In accordance with the general principles of the MoU, consultation between DWP and the SG will take place at the earliest possible stages in the development of relevant legislative proposals, in confidence where necessary, and making every effort to consider any specific implications for each other.
13. DWP and the SG will ensure that, before laying regulations where there is a statutory duty to consult with each other under sections 29 and 30 of the Scotland Act 2016, this duty is discharged in a way that allows consultation to be meaningful and constructive.
14. DWP and the SG will consult each other beforehand on matters relating to the exercising of shared powers in order to avoid contradictory actions and duplication of effort. The shared powers concern devolved functions under sections 2, 11(3) and 12(4) of the Employment and

⁵ DGN 10: Post-devolution primary legislation affecting Scotland: guidance for UK government departments on handling legislation affecting Scotland. Sets out how the LP Committee expects departments to handle primary legislation affecting Scotland, while ensuring the smooth management of the government's legislative programme.

Training Act 1973 (powers to make arrangements for employment and training etc. and to make certain payments related to training courses) and section 17B of the Jobseekers Act 1995.

Correspondence

15. DWP and the SG will handle replies to correspondence (including Freedom of Information requests) in accordance with the MoU, Devolution Guidance Note 2: Handling Correspondence under Devolution⁶ and any procedures agreed between them on common working arrangements. If a letter or other enquiry is received where both DWP and the SG have an interest they will agree on a case-by-case basis on how the reply should be handled.
16. Correspondence which has to be transferred by one to the other will be done so as quickly as possible and, within a day of the transfer, a letter should be sent to the correspondent confirming what action has been taken and who is responsible for handling correspondence.

Announcements

17. Where announcements are to be made on matters that involve both devolved and reserved matters, DWP and the SG will liaise with each other on the co-ordination of the arrangements including any joint work required. For the areas in the Scotland Act 2016 related to social security and employability, this will be carried out through the joint DWP/SG Communications and Engagement Group.

Producing Information Material

18. Where information material is to be produced which covers both reserved and devolved matters, DWP and the SG will give each other sufficient notice of, and agree the content of, the relevant parts within the material before publication.

Parliamentary Business

19. DWP and the SG will co-operate to enable each to meet its obligations to the UK Parliament and Scottish Parliament respectively having regard to the principles set out in the MoU, the advice in paragraphs 20-28 of Devolution guidance Note 1⁷ and any agreements between the administrations on common working arrangements.
20. In particular, DWP and the SG will aim to treat enquiries and requests for information from the other with the same priority as a request from their own legislative body.
21. Subject to any legal and contractual restrictions, the SG and DWP confirm their commitment to, where appropriate, provide each other with access to policy and other information, including statistics and research, and, where appropriate, representations from third parties.

Appearance of Witnesses

⁶ DGN 2: Handling correspondence under devolution: the general principles for the handling by UK government departments of correspondence from members of the devolved legislatures. Guidance on the handling of inter-ministerial and inter-departmental correspondence is available in devolution guidance note 6.

⁷ DGN 1: Common working arrangements: advice on common working arrangements between the UK government and the devolved administrations. It sets out an introduction to the main principles involved in the managing of the devolution settlements and looks in more depth at bilateral relations, correspondence, parliamentary business, legislation and concordats.

22. The Scottish Parliament may invite Ministers or officials from DWP to attend proceedings to give evidence or to provide documentary evidence. DWP will consider each such invitation on a case-by-case basis, having regard to the advice set out in Devolution Guidance note 12⁸. DWP will aim to be as helpful to the Scottish Parliament as possible, subject to considerations of confidentiality and the overriding priority that must be given to matters arising in the UK Parliament. DWP have nominated a contact point to handle all requests from the Parliament, and the SG have nominated a contact point who will be kept informed by DWP of any such requests.
23. Similarly, the UK Parliament may invite SG ministers or officials to attend proceedings to give evidence or provide documentary evidence. SG will consider each such invitation on a case-by-case basis, having regard to the advice set out in the Scottish Ministerial code. SG will aim to be as helpful as possible to the UK Parliament, subject to considerations of confidentiality and the overriding priority that must be given to matters arising in the Scottish Parliament. SG will nominate a contact point to handle all requests from the UK Parliament, and DWP have nominated a contact point who will be kept informed by the SG of any such requests.

Confidentiality

24. Paragraph 12 of the MoU sets out the principles that govern the duty of confidence between the UK Government and the devolved administrations. In line with those principles, DWP and the SG will respect the confidentiality of information received from each other, and will clearly indicate the status of, and any restrictions on the use of, information which is shared.

Finance

25. HM Treasury's Statement of Funding Policy⁹ sets out the policies and procedures, which underpin the exercise of setting the budgets of the devolved administrations.
26. The Fiscal Framework¹⁰, underpins the powers over welfare that have been devolved to the Scottish Parliament through the Scotland Act 2016, including transfers between UK Government and the SG for the administration and implementation costs, and sets out the headline principles for the recharging of costs associated with the powers being devolved.
27. The Statement of Funding Policy and/or the Fiscal Framework shall govern the implications of decisions taken by the SG which have financial implications for the DWP, or alternatively, decisions taken by the DWP which lead to additional costs for the SG, where other arrangements do not exist to account for such extra costs. The UK Government and the SG will agree separately how those costs should be met, either through existing structures such as the Joint Exchequer Committee or separately.

Service Provision

28. DWP and the SG may seek access to each other's services and expertise to ensure that the responsibilities and duties of the UK Government and the SG may be discharged.

⁸ DGN 12: Attendance of UK ministers and officials at committees of the devolved legislatures: advice for 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.

⁹ HMT Statement of Funding Policy 2015

¹⁰ Agreement between the Scottish Government and United Kingdom Government on the Scottish Government's Fiscal Framework

Arrangements in existence prior to 1 July 1999 for administrative liaison and co-ordination, and if appropriate for cost sharing, will continue until changes are agreed or have been overridden by the operation of the Fiscal Framework. Where new demands are made, or where costs to providers change, DWP or the SG will make proposals for new costing or funding arrangements.

29. Where DWP and the SG are mutually dependent on each other's services, for example to deliver their respective responsibilities, separate agreements will set out the agreed responsibilities in these areas, and others, which may arise.

Regulatory Impact Assessments

30. Standing Orders of the UK Parliament require a regulatory appraisal of the costs and benefits of proposed legislation. Where DWP is preparing a regulatory impact assessment for the same (or very similar) legislation to that of the SG, in order to save duplication of effort, DWP will liaise with the SG to ensure that the assessment takes appropriate account of the situation in Scotland.

Human Rights Act 1998

31. Similarly, DWP will liaise with the SG to ensure that assessments of compliance with the Human Rights Act 1998 are shared, where parallel legislation is proposed.

Reaching Agreement

32. Both parties recognise that the vast majority of matters will be handled routinely between DWP and the SG in accordance with liaison arrangements set out in the MoU, this Concordat and a number of Service and Working Level agreements. Both the SG and DWP are committed to resolving issues at working level wherever possible or, if necessary, at Senior Civil Service levels. Only very exceptionally should it be necessary to refer matters to Ministers. Given its role in promoting effective working relationships between UK Government and SG, the Office of the Secretary of State for Scotland will be made aware of issues that cannot be effectively resolved between officials and be involved in relevant discussions, where appropriate.

33. For matters of Social Security and Employability, the escalation route outlined in the *Memorandum of Understanding on joint working arrangements covering the implementation of devolved provisions in the Scotland Act 2016 relating to Social Security and Employment Support Services in Scotland (January 2019)* as amended from time to time should be followed. For all other matters covered by this Concordat the *Agreement on Dispute Avoidance and Resolution* in the MoU should be followed. DWP and the SG will inform the other beforehand of any proposal to involve the Joint Ministerial Committee.

Review

34. The Concordat may be amended at any time if both parties agree in writing to the changes.

Queries about this Concordat

35. Queries about this Concordat should be addressed to:

Devolution Policy
Department for Work and Pensions
Caxton House

20.03.2020

Tothill Street
Westminster
SW1H 9NA

Agreement

[REDACTED]

Annex 1

Matters About Which DWP and the Scottish Government Will Establish and Maintain Good Communications

This is not an exhaustive list; rather, it represents the main issues where the DWP and the Scottish Government are expected to co-operate in order to deliver effective administration.

- Implementation of the powers devolved to Scotland under the Scotland Act 2016
- Policy Development and new legislation where there are direct or indirect impacts on the other party.
- Funding Arrangements in line with the 'Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: Statement of Funding Policy', Seventh Edition, November 2015 and the Fiscal Framework 2016.
- Concurrent Powers as set out in Section 2 of the Employment & Training Act 1973.
- Services provided by DWP to the Scottish Government.
- Services provided by the Scottish Government to DWP.
- Exchange of relevant statistical and research data.
- Liaison on EU and relevant other matters including UN Convention of the Rights of People with Disabilities (UNCRPD).
- Liaison on appointments to certain public bodies.



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