

“PS/Cabinet Secretaries
PS/Ministers

MINISTERIAL APPOINTMENTS: EXERCISE OF MINISTERIAL FUNCTIONS AND RESPONSIBILITIES

1. The purpose of this note is to advise you of the current position as regards the exercise of ministerial functions and responsibilities post the recent announcement/s by the First Minister of her proposed Ministerial Team.

Ministers with new or altered portfolios

2. All members of the Ministerial Team are appointed generically (under sections 47 or 49 of the Scotland Act 1998) and not to specific portfolios. Therefore, Cabinet Secretaries or Ministers who have transferred to a new or altered portfolio are free to exercise the statutory functions of the Scottish Ministers, answer parliamentary questions, make ministerial statements or participate in parliamentary proceedings in connection with his/her new remit with immediate effect. This applies to the following incumbents:

Cabinet Secretaries:

Mr Swinney, Ms Cunningham, Mr Ewing, Mr Mackay, Mr Matheson and Ms Hyslop

Ministers:

Mr FitzPatrick, Mr Wheelhouse, Mr Hepburn, Ms Todd and Mr Stewart

Cabinet Secretaries Designate

3. The First Minister announced her intention that **Ms Campbell, Ms Freeman, Ms Somerville, Mr Russell and Mr Yousaf** be appointed as Cabinet Secretaries. As these individuals are already members of the ministerial team they too are free to operate as described above. However, their appointments are not expected to be formalised via a letter from the First Minister until late today (post parliamentary agreement and Her Majesty’s approval) or tomorrow (29 June). On that basis they should be referred to, and refer to themselves, as a ‘Cabinet Secretary designate for...’ in all contexts (including media) until confirmed in office.

4. The Cabinet Secretary designates are expected to be sworn in at the Court of Session next week.

Ministers Designate

5. The First Minister announced her intention that **Mr Dey, Ms Haughey, Ms McKelvie, Ms Martin, Ms Forbes, Mr McKee, Ms Gougeon, Ms Denham and Mr MacPherson** be appointed as Ministers. As these individuals were not members of the previous ministerial team the following restrictions on their activity apply until confirmed in office by the First Minister (again, that is expected to happen late today or tomorrow via a letter from the First Minister):

- they should be referred to, and refer to themselves, as a ‘*Minister designate for...*’ in all contexts until confirmed in office.

- Ministers' designate cannot exercise any of the statutory powers which legislation confers on the Scottish Ministers (e.g. signing statutory instruments). In practice this will not cause an issue, as any existing member of the Ministerial team can undertake such business.
- We are almost at Summer Recess, but we should note that a Minister designate cannot participate in parliamentary proceedings in connection with his/her new remit until his or her appointment has been confirmed. In terms of remaining plenary business, we would highlight that parliamentary questions may only be answered by a member of the Scottish Government or a junior Scottish Minister.
- The Scotland Act requires a junior Minister to take the oath of allegiance (or make a solemn affirmation) on appointment, if he or she has not already done so in compliance with his or her duty as an MSP. All proposed appointees have already complied with that requirement (at the start of the current parliamentary session) and no further action is required.

6. There is nothing to prevent Ministers' Designate from doing other things at present which do not involve the exercise of statutory powers and do not involve them purporting to act formally as a junior Scottish Minister. For example:

- In terms of civil service support, a Minister designate is able to receive full civil service support including a Private Office, Communications, GCS cars, official support etc. They could also undertake events as a Minister designate or speak with/meet key stakeholders etc.
- A Minister Designate, if invited to do so, is also free to attend Cabinet.
- Care must be exercised were designates to undertake media bids and/or have lines issued in their name (under either scenario always acknowledging their status as Ministers designate). As with parliamentary debates, any views expressed could be compromised by the fact that the designate is not yet formally a Government representative.

7. I hope this information proves useful and I should be happy to discuss any of the above if required.

James Hynd

Head of Cabinet, Parliament and Governance Division

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SAH

Ext 43223

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