



Concordats and Devolution Guidance Notes

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The detailed administrative arrangements for relations between the UK Government and the devolved areas are set out in a number of documents. These are not statutory rules, but take the form of agreements and guidance notes. There is debate as to their legal status, but they are not intended to be legally binding. They are useful in looking at how the practicalities of devolution are handled.

This note gives information on the agreements and how to find them.

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A. The administrative arrangements

The general scope and structure of devolution are set out in the *Scotland Act 1998*, the *Government of Wales Act 1998* and, subject to the current suspension, the *Northern Ireland Act 1998*. However, it was recognised from the beginning that further guidance would be needed to cover the details of administrative cooperation.

The White Papers preceding the Scotland and Wales Acts noted that the Scottish Executive and the National Assembly for Wales would need to develop mutual understandings with UK departments to cover the exchange of information, advance notification and joint working.

The first step was the publication, in October 1999, of a Memorandum of Understanding (MOU) and five accompanying agreements.¹ One of the agreements concerned the establishment of a Joint Ministerial Committee (JMC), while the other four were known as “concordats” and covered coordination on European policy, financial assistance to industry, international relations and statistics.

There is greater detail on the background to this in RP 99/84, *Devolution and Concordats*, 19 October 1999, at:

<http://www.parliament.uk/commons/lib/research/rp99/rp99-084.pdf>

1. Memorandum of Understanding

The MOU is an overarching statement of the principles that the various parties agree will guide the relationships between the executive authorities in the UK, Scotland, Wales and Northern Ireland. It is reviewed at least annually and updated as necessary. It sets out the broad agreement concerning the establishment of the JMC and the concordats, which are embodied in separate annexed documents.

Overarching responsibility for the Memorandum of Understanding and JMC arrangements lay originally with the Lord Chancellor’s Department, and it now lies with the successor Department for Constitutional Affairs (DCA).

2. Joint Ministerial Committee

The JMC includes ministers from the UK, Scotland, Wales and in theory Northern Ireland. It can meet in plenary, when it is chaired by the Prime Minister, or in sectoral groups, when it is chaired by the responsible UK minister. The sectoral JMCs meet in the areas of health, poverty, the knowledge economy, and the European Union.

The JMC considers non-devolved matters which impinge on devolved responsibilities, devolved matters which impinge on non-devolved responsibilities, and, by agreement, other devolved matters when it is beneficial to discuss their treatment in different parts of the UK. It also considers disputes between the administrations, and it keeps the arrangements for liaison under review.

¹ Cm 4444, 1 October 1999. Superseded by Cm 5240, December 2001.

3. Concordats

The concordats are agreements setting out the undertakings of the UK Government and the devolved administrations in specific subject areas. They are not made on a statutory basis, nor are they subject to parliamentary approval. However, there is some dispute as to their legal status.

According to the MOU, they are “not intended to be legally binding, but to serve as working documents.”² Indeed, the MOU describes itself as “a statement of political intent [which] should not be interpreted as a binding agreement” and as “binding in honour only.”³ The concordats themselves use similar language, stressing that they do not create a legally enforceable contract nor any legally enforceable rights or obligations between the parties. On the other hand, ministers accepted that the concordats might create “legitimate expectations” that they would be followed, a concept which is recognised in English and Scottish administrative law. This might open the possibility of judicial review of actions which were inconsistent with a concordat.⁴

The House of Lords Constitution Committee considered the concordats in its second report of 2002-03.⁵ It made recommendations on the publication of the documents, and also argued that, to remain useful, the concordats should be subject to regular renegotiation but without the possibility of repudiating them in between times:⁶

We recommend that concordats be made for a fixed term only, capable of being varied during that term if necessary but to terminate at the end of that term and be renegotiated. During that term, it would not be open to a party to withdraw from or repudiate a concordat.

In addition to those that were published with the MOU, each Whitehall department was encouraged to develop its own concordats with the executives in Scotland and in Wales. Some departments also developed concordats with the Northern Ireland Executive, but these have ceased to operate during the ongoing suspension of devolution in Northern Ireland. These departmental concordats set out in some detail how the departments will work with the devolved executives in their subject areas. Some departments have agreed more than one concordat, as in the case of the former Ministry of Agriculture, Fisheries and Food, which drew up a main concordat with the Scottish Executive, plus additional ones on fisheries, the State Veterinary Service and cattle movement.

² Para 3.

³ Para 2.

⁴ Eg, HC Deb 12 May 1998, c194; HL Deb 21 April 1998, cc1131-32.

⁵ *Devolution: inter-institutional relations in the United Kingdom*, HL 28 2002-03, 16 January 2003: <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldconst/28/2801.htm>.

⁶ Para 43.

4. Devolution Guidance Notes

In addition to these relatively high-level documents, the DCA publishes a series of Devolution Guidance Notes (DGNs). These are aimed primarily at civil servants, and they provide advice and guidance intended to promote best practice in dealing with devolved matters and relations between Whitehall and the devolved areas.

There are currently 15 DGNs, covering matters such as the roles of the Secretaries of State for Scotland, Wales and Northern Ireland, the handling of primary legislation affecting the devolved areas and the handling and circulation of correspondence.

B. How to find the documentation

The MOU can be found at:

http://www.dca.gov.uk/constitution/devolution/pubs/odpm_dev_600629.pdf

The terms of reference of the JMCs, both plenary and sectoral, and their communiqués, are available at:

<http://www.dca.gov.uk/constitution/devolution/jmc.htm#part2>

The concordats are listed on the DCA website at:

<http://www.dca.gov.uk/constitution/devolution/publications.htm#part2>

However, an easier way of finding them is through the Scottish Executive website:

<http://www.scotland.gov.uk/concordats/>

and the website of the National Assembly for Wales:

http://www.wales.gov.uk/keypubconcord/content/concordats/index_e.htm

The DGNs, with short summaries of each, can be found at:

<http://www.dca.gov.uk/constitution/devolution/guidance.htm>.