

CONCORDAT BETWEEN THE SCOTTISH EXECUTIVE AND THE HOME OFFICE

Introduction

1. This Concordat establishes an agreed framework for co-operation between the Scottish Executive and the Home Office, in accordance with the principles set out in the Memorandum of Understanding between the UK Government and the devolved administrations. It is intended to guide the actions of officials in the Scottish Executive and the Home Office on matters for which the Home Office has responsibility.
2. The Concordat is not intended to constitute a legally enforceable contract nor to create any rights or obligations which are legally enforceable. However, the Scottish Executive and the Home Office agree to abide by the provisions and obligations set out in it wherever practicable.
3. In this Concordat, “the parties” means the Scottish Executive and the Home Office.
4. The parties to this Concordat will act in accordance with the principles laid down in the Memorandum of Understanding and the overarching Concordats on European Union Policy Issues, International Relations and Statistics.

Background

5. Under the Scotland Act 1998 considerable areas of work for which the Home Office is responsible in England and Wales are the responsibility of the Scottish Executive in Scotland. To a large extent this reflects the fact that Scotland has always had its own distinct system of civil and criminal law and procedures, with separate legislation governing the police, prison, and probation services (see Annex A for list of devolved matters).
6. Areas where the UK Government, and in particular the Secretary of State for the Home Department, retain responsibility under the Scotland Act (reserved matters) include the constitution of the United Kingdom, the functions of the security services, national security, immigration and asylum matters, criminal law in relation to drugs, elections to the Scottish Parliament, the UK Parliament and the European Parliament and race equality (see Annex B for list).
7. Even in areas which are the responsibility of the Scottish Executive in Scotland, notably most civil and criminal law and procedures, overlaps of interest will arise either on a regular basis, or from time to time. The purpose of this Concordat is to indicate the elements of good practice which should inform contacts between the two administrations in such cases, so as to encourage good communication, promote understanding of the operation of policy and practice in the respective jurisdictions and ensure that the actions of one administration do not unwittingly create difficulties for the other.

8. Similar considerations apply to co-operation in areas which are the responsibility of the United Kingdom government, and in particular of the Home Office, in Scotland. This Concordat outlines good practice in situations where responsibility lies with the Secretary of State for the Home Department, but this responsibility needs to be exercised on the ground with the co-operation of the Scottish authorities.
9. This Concordat sets out the general framework applying to all the matters for which the Home Office has responsibility. Where more detailed operational arrangements are necessary, additional working level arrangements will be agreed between officials. These arrangements will conform with this Concordat and the Memorandum of Understanding. A list of areas likely to be covered by working level agreements is at Annex C.

Cross-border public authorities

10. The Scotland Act allows cross-border public authorities to be specified by Order in Council. A cross-border public authority is a body, government department, office or office-holder which has, in addition to other functions, functions exercisable in or as regards Scotland that do not relate to reserved matters. A list of bodies currently so specified for which the Home Office has responsibility is at Annex D. Great Britain/United Kingdom bodies which deal only with reserved matters in Scotland cannot be cross-border public authorities; a list of such bodies for which the Home Office has responsibility is also at Annex D for ease of reference. (None of what is said in paragraphs 11-16 below applies to bodies which cover only England and Wales).
11. The general provisions in the Scotland Act for transferring functions to the Scottish Parliament and Scottish Ministers do not apply to cross-border public authorities. However, for all cross-border public authorities, UK Ministers must consult Scottish Ministers before making appointments or exercising any function in relation to the authority which might affect Scotland other than in relation to reserved matters. Any reports relating to cross-border public authorities that must be laid before the UK Parliament must also be laid before the Scottish Parliament. Orders in Council may also be made to make changes to individual cross-border public authorities to take account of devolution.
12. More detailed working level agreements will be needed to set out the parties' responsibilities in relation to individual cross-border public authorities.

Great Britain/UK Bodies

13. In the case of Great Britain/UK bodies dealing solely with reserved matters, the Scotland Office should be consulted in the first instance about Scottish interests. It is for that Office to liaise as necessary with the Scottish Executive.
14. Although it will normally not be mandatory to consult Scottish interests when making appointments to such bodies, in practice it has been customary to do so

when making appointments to a number of Great Britain/UK bodies (for example, the Gaming Board).

15. The parties therefore agree that it would be good practice to consult the Scotland Office before making an appointment to a Great Britain/UK body to ascertain whether there are specific Scottish interests to be taken into account. In the case of the Commission for Racial Equality, the appointment of a member with special knowledge of Scotland will be made with the agreement of the Secretary of State for Scotland.
16. While it will not be mandatory for Great Britain/UK bodies to lay before the Scottish Parliament reports presented to the UK Parliament, it would be courteous to do so. The parties therefore agree that as a matter of good practice the Home Office will ensure that such reports are laid before the Scottish Parliament.

Consultation arrangements, early notification and exchange of information

17. The parties recognise the need to keep in close touch with each another on matters of common interest or where one party's work may have some bearing on the responsibilities of the other. In accordance with the framework set out in the Memorandum of Understanding, whenever possible each party should be forewarned of relevant action by another, in sufficient time to allow representations to be made and for these representations to be fully considered.
18. The parties also confirm their commitment to provide each other with full and open access to scientific, technical and policy information including statistics and research. The Home Office will continue to process statistics and commission research on a GB/UK wide basis where concurrent functions are exercisable, where the statistics or research relate to matters which are not wholly devolved or otherwise by mutual agreement.
19. The circumstances in which exchange of information is appropriate will vary widely, so uniform procedures cannot be laid down. The guidelines below set out normal expectations. It is recognised that, in exceptional circumstances, these norms may not be achievable or appropriate. But the parties should use their best endeavours to achieve them and any failure to do so should be reviewed annually (see paragraph 25).

Policy initiatives and associated announcements:	Advance notification and consultation as early as practicable and normally not less than 1 month prior to the announcement of a major relevant policy initiative.
Legislative proposals, including subordinate legislation:	Advance notification and consultation as early as practicable and normally not less than 3 months prior to the introduction of primary legislation or 1

Requests for information:	<p>month prior to the making of subordinate legislation.</p> <p>Information normally provided within 15 working days.</p>
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20. Contact under the terms of this Concordat will normally take place bilaterally. Consultation should normally be in writing, but should be supplemented by additional informal contact wherever possible.

Confidentiality

21. The framework set out in the Memorandum of Understanding on confidentiality will apply to the exchanges of information between the parties. The parties accept that they can expect to receive information in confidence only if that information is treated with appropriate discretion. The administration providing the information will state what, if any, restrictions there should be upon its usage and both parties will treat information they receive in accordance with any such restrictions. Disclosure of information will be subject to the *Code of Practice on Access to Government Information* or the *Code of Practice on Access to Scottish Executive Information* and in due course the requirements of future freedom of information regimes.

Correspondence

22. Both parties are committed to ensuring that the handling of correspondence is given a high priority. Correspondence will be handled in accordance with the principles set out in the Memorandum of Understanding and any procedures agreed between the administrations on common working arrangements. Where correspondence has to be transferred, each party will aim to transfer letters within 5 working days of receipt. Within the same time, the correspondent should be told what action has been taken and who is now responsible for handling their correspondence. Correspondence should only be transferred with the prior agreement of the receiving administration. (Any Freedom of Information legislation will have implications for confidentiality and correspondence handling. This paragraph and paragraph 21 above will therefore need to be revised when a Freedom of Information Act comes into force).

Finance

23. Financial arrangements will be handled in accordance with the statement of funding policy issued by HM Treasury: *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly*.

Reaching agreement

24. The framework for reaching agreement and resolving disputes set out in the Memorandum of Understanding will apply to relationships between the parties. The parties will seek to resolve any disagreement or dispute arising over the operation of this Concordat bilaterally at working levels wherever possible. In the event that agreement cannot be reached the matter will be passed to Senior Civil Service levels or if necessary to the Heads of Departments for a decision. Only very exceptionally should it be necessary to refer matters to Ministerial level or the Joint Ministerial Committee under the arrangements described in the Memorandum of Understanding.

Reviewing bilateral relations

25. The operation of this Concordat will be reviewed annually by the Permanent Secretary at the Home Office and the Permanent Head of the Scottish Executive Justice Department – normally by means of a meeting.
26. This concordat may be amended at any time by mutual agreement between the parties.

DEVOLVED MATTERS

- Criminal law and procedure (except for offences created in statute law relating to reserved matters, including drugs and firearms)
- Crime reduction policy
- Civil law (except in relation to matters which are reserved)
- Electoral law in relation to local government elections (except the franchise)
- The criminal justice and prosecution system
- The civil and criminal courts
- Youth justice issues, including the system of children's hearings and supervision requirements for young people
- Measures to prevent unsuitable adults working with children and young people
- Parole, the release of life sentence prisoners and alleged miscarriages of justice
- Prisons and the treatment of offenders
- Mentally disordered offenders
- The police and fire services, including general fire safety
- Civil defence (and emergency planning)
- Social work services to the criminal justice system (supervision of offenders in the community, community sentences)
- Voluntary sector and volunteering issues
- Family policy
- Encouragement of equal opportunities
- Victims issues
- Functions under various international legal agreements in devolved areas
- Liquor licensing

- Matters relating to theatre licensing (sections 12-14 of the Theatres Act 1968)
- Matters relating to health and safety in cinemas (section 4 of the Cinemas Act 1985)
- Protection of animals (except scientific procedures on live animals), including protection against cruelty to domestic and captive wild animals, controlling dangerous wild animals and game
- Dangerous dogs
- Royal Prerogative in relation to devolved matters
- Religion
- Hypnotism Act 1952
- Public access to information held by the Scottish Parliament; any part of the Scottish Administration; the Parliamentary corporation; or any Scottish public authority with mixed or no reserved functions, unless supplied by a Minister of the Crown or government department and held in confidence.¹²

¹ Access to all other information held by public bodies or holders of public offices is a reserved matter (see Annex B).

² This will be achieved by an Order under section 30(2) of the Scotland Act 1998, amending schedule 5 to that Act.

RESERVED MATTERS

- The constitution of the United Kingdom
- The functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters
- International relations, including relations with territories outside the United Kingdom, the European Union (and its institutions) and other international organisations
- Treason
- National security, interception of communications
- Prevention of terrorism
- Emergency powers
- The protection of borders and allied matters – including immigration and nationality, asylum, extradition, the criminal law in relation to drugs and firearms and the regulation of the misuse of drugs
- Data protection
- Elections for membership of the House of Commons, the European Parliament and the Scottish Parliament
- Registration and funding of political parties
- Classification of video recordings and films (the Video Recordings Act 1984 and the Cinemas Act 1985, except section 4)
- Betting, gaming and lotteries
- Scientific procedures on live animals
- Honours and dignities
- Racial equality
- Time zones, Summertime Act 1972 and the date of Easter

- Public access to information held by public bodies or holders of public offices (including government departments and persons acting on behalf of the Crown).³⁴

Reserved matters which are the subject of executive devolution

- Designation of casino areas, setting of gaming hours and fees for certain licences, registrations, certificates and permits and the power to make regulations concerning the refusal to grant or renew gaming licences
- Transfer to hospital for treatment under the Mental Health (Scotland) Act 1984 of persons held under UK immigration legislation
- Administration of certain aspects of firearms licensing (licensing of rifle clubs, authorisation to hold prohibited weapons or ammunition, museum licenses)
- Payment of grants to police authorities for expenditure on safeguarding national security
- Establishment and operation of police and fire pension schemes
- Extradition casework in Scottish cases
- Appointment of medical inspectors under the Immigration Act 1971
- Authorisations under the Interception of Communications Act 1985 for the purpose of preventing or detecting serious crime for targets located in Scotland
- Authorisations under the Intelligence Services Act 1994 for the purpose of preventing or detecting serious crime for targets located in Scotland
- Authorisations under the Wireless Telegraphy Act 1949 for the purpose of preventing or detecting serious crime
- Making procedural rules and being consulted about appointment and rules in respect of certain tribunals which are concerned with reserved matters
- Exemptions for cinema licences (sections 6(6) and (7) of the Cinemas Act 1985)

³ This does not include public access to information held by the Scottish Parliament; any part of the Scottish Administration, the Parliamentary corporation; or any Scottish public authority with mixed or no reserved functions, unless supplied by a Minister of the Crown and held in confidence (see Annex A).

⁴ This will be achieved by an Order under section 30(2) of the Scotland Act 1998, amending schedule 5 to that Act.

JOINT WORKING

Joint working will be particularly relevant in the following cases and could usefully be covered by working level agreements:

- the planning and implementation of responses to civil and other emergencies, where such emergencies affect, or may affect, the whole of Britain;
- dispute resolution and pay determination in the Prison Services;
- regulation of relevant public sector pension schemes;
- changes affecting the policy or procedures governing the release of life or determinate sentence prisoners;
- the cross border transfer of prisoners, offenders subject to supervision and restricted patients;
- other cross border issues relating to mutual police assistance and powers of arrest and search;
- developing legislation on intrusive investigative techniques;
- mutual enforcement of confiscation orders under respective Orders in Council;
- the statutory framework governing the enforcement of domestic and overseas confiscation and forfeiture orders;
- enforcement of confiscation orders under international agreements in Scottish cases;
- reserved matters which are the subject of executive devolution (listed in Annex B);
- Ministerial responsibility for cross-border public authorities (listed at Annex D); and
- reserved matters in which the Scottish Executive has an interest including:
 - EU business;
 - international matters affecting justice and home affairs;
 - prevention of terrorism;
 - race equality;
 - data protection;
 - the continued operation of the Joint Strategic Committees of the Central Fire Brigades Advisory Councils; and
 - arrangements for the dispersal of asylum seekers and the designation of reception zones.

ANNEX D

CROSS-BORDER PUBLIC AUTHORITIES FOR WHICH THE HOME OFFICE HAS RESPONSIBILITY

- Advisory Council on the Misuse of Drugs
- Alcohol Education and Research Council
- Chief Commissioner and Commissioners appointed for the purpose of Part III of the Police Act 1997 (Surveillance Commissioners)
- Community Development Foundation
- Criminal Injuries Compensation Appeals Panel
- Criminal Injuries Compensation Authority
- Criminal Injuries Compensation Board
- Fire Service Examinations Board
- National Criminal Intelligence Service
- Police Information Technology Organisation
- Police Negotiating Board for the United Kingdom
- Service Authority for the National Criminal Intelligence Service

GB/UK BODIES FOR WHICH THE HOME OFFICE HAS RESPONSIBILITY WHICH ARE NOT CROSS-BORDER PUBLIC AUTHORITIES

- Animal Procedures Committee
- British Board of Film Classification
- Commission for Racial Equality
- Data Protection Tribunal
- Firearms Consultative Committee

- Gaming Board for Great Britain
- Horserace Betting Levy Board
- Horserace Totaliser Board
- Interception of Communications Act 1985 Commissioner and Tribunal
- Misuse of Drugs Advisory Body
- Misuse of Drugs Professional Panel
- Misuse of Drugs Tribunal
- Office of the Data Protection Registrar
- Office of the Surveillance Commission
- Poisons Board
- Security Services Act 1989 Commissioner and Tribunal