

Devolution Guidance Note 3

Updated: October 2006

The Role of the Secretary of State for Scotland

SUMMARY

- **Ministerial functions in relation to devolved matters in Scotland are the responsibility of the Scottish Ministers within the Scottish Executive.**
- **The Secretary of State for Scotland holds that post jointly with another Cabinet post. He represents Scotland in reserved matters within the Government.**
- **The Secretary of State promotes the Scottish devolution settlement. In addition, he is responsible for orders made under the Scotland Act, financial transactions between the Government and the Scottish Executive, certain elections in Scotland and some residual functions in reserved areas.**
- **The Scotland Office is a distinct entity within the Department for Constitutional Affairs. Scotland Office officials report to the Secretary of State and the Parliamentary Under Secretary of State for policy purposes.**
- **The Memorandum of Understanding and associated system of concordats provide for consultation, co-operation and exchanges of information in relation to the interests of the devolved administration in Government policies.**
- **Departments need to distinguish between devolved and reserved matters when considering the impact of their policies in Scotland.**
- **Since Cabinet Committee papers are not available to Ministers or officials of the Scottish Executive and since inter- Ministerial correspondence is not normally copied to them by the Scotland Office, the lead UK Department should make its own arrangements to consult or inform the Scottish Executive and should state whether they have done so when circulating proposals for collective consideration.**

Introduction

1. On 1 July 1999, the Scottish Parliament took on its legislative powers for devolved matters, and Ministerial functions for such devolved matters transferred to Scottish Ministers who are accountable to the Scottish Parliament. This note offers guidance to UK Departments on the role of the Secretary of State for Scotland, who remains part of the Government and is accountable to the UK Parliament. It also sets out arrangements for considering the implications for Scotland of Government policies in reserved areas.

2. Matters reserved to the UK Parliament are listed in Schedule 5 of the Scotland Act 1998 (as amended). However, they can have implications for Scotland through their impact on the policies of the Scottish Executive, since the Executive will have to implement them in Scotland (for example, European Union regulations); on the exercise of Ministerial functions which are devolved; on public bodies which are financed by the Scottish Executive; or because they may need to take account of separate Scottish law. The system of Concordats between individual departments and the Executive, under the Memorandum of Understanding between the Government and the Scottish Executive, is intended to ensure that these implications are taken into account in developing UK policies. The system is also intended to enable the Scottish Executive to develop its policies with relevant information about reserved matters.

The Role of the Secretary of State for Scotland

3. The Secretary of State for Scotland holds the post jointly with another post in the Cabinet. In addition to his other ministerial duties, he continues to represent the interests of Scotland in Cabinet as Secretary of State for Scotland, particularly in those matters reserved to the Government by the Scotland Act. He is responsible for the smooth running of the Scotland's devolution settlement and acts as guardian of the Scotland Act, especially in relation to orders made under its authority. The Secretary of State is supported on ministerial matters by the Parliamentary Under Secretary of State for Scotland. Both ministers are advised on their work in relation to Scottish devolution by the Scotland Office, a distinct entity within the Department for Constitutional Affairs. Scotland Office officials report to the Secretary of State and the Parliamentary Under Secretary of State for policy purposes.

4. The Secretary of State and the Parliamentary Under Secretary of State are members of most Cabinet Committees and Sub-Committees touching their duties in relation to Scotland independently of the Secretary of State's other ministerial duties. The Secretary of State should therefore be copied in at the Scotland Office for all relevant ministerial correspondence. He expects to be consulted by colleagues on the impact their proposals will have on Scotland and how they fit in with the terms of the Scottish devolution settlement.

5. The Secretary of State for Scotland promotes the devolution settlement provided for by the Scotland Act 1998 by encouraging close working relations between the UK Departments and the Scottish Executive, and between the UK and Scottish Parliaments. This does not mean acting as a conduit for the necessary

communication between the Government and the Scottish Ministers. Normally Departments should deal with the Scottish Executive direct. But the Secretary of State should be kept closely informed about issues which involve both reserved and devolved matters, and more generally about relations with the Scottish Executive. Departments should therefore copy to the Secretary of State or the Scotland Office all correspondence between UK Ministers and Scottish Ministers.

6. Scotland Office ministers and officials can provide advice in relation to Government policy in Scotland. In particular, where colleagues agree, Scotland Office ministers may be able to help with presentation when major announcements are made on non-devolved matters that will have a major effect in Scotland. They should inform Scotland Office ministers when such announcements are to be made.

7. The Secretary of State for Scotland is the custodian of the Scotland Act 1998, and secondary legislation under the Act ("Scotland Act Orders") should be made only with the agreement of the Secretary of State. Scotland Act Orders are used both to implement and (occasionally) to amend Scotland's devolution settlement. Scotland Office ministers usually lead on Parliamentary proceedings on these orders and the process of agreeing policy for and laying such orders is managed by the Constitutional Branch of the Scotland Office, who also ensure that the order is consistent with the Scottish devolution settlement. Such Orders often cover wide policy areas and involve lengthy discussion between the Scotland Office, UK Departments and the Scottish Executive before they can be made.

8. In addition, the Secretary of State retains responsibility for certain limited executive functions, notably in relation to the financial transactions between the UK Government and the Scottish Executive, in elections in Scotland and undertakes certain residual functions for Scotland in reserved areas.

Scotland Office

9. The Scotland Office has offices in at Dover House in London and in Melville Crescent in Edinburgh. It contains two policy divisions. The Briefing Services Division advises on all reserved matters of home, social, industrial and economic policy for its actual or potential impact on Scotland. It is also responsible for the executive role exercised by the Secretary of State on elections to the Scottish Parliament and the operation of the Boundary Commission for Scotland in its work on reviewing Parliamentary constituency boundaries. The interests of Parliamentary and Constitutional Division include the operation of the devolution settlement, the UK legislative programme, relations with committees of the UK Parliament and the Office's interest in civil contingency planning. The Office also has a Finance and Administration Division. The Scotland Office works closely with the Office of the Solicitor to the Advocate General, which provides legal services relating to Scotland to the Government.

Correspondence at official level should be addressed to the Head of Department, Dr Jim Wildgoose, at Dover House (0207 270 6769), or to the appropriate official as follows:

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Consulting the Scottish Executive

11. UK Departments need to consider the implications of both reserved and devolved matters when considering matters relating to Scotland. In relation to reserved matters, UK Departments have functions that extend throughout Great Britain or the United Kingdom, and the Scotland Office should be consulted in the first instance. But the Scottish Executive should usually be consulted also, as any implications for Scotland will need to be considered both from the point of view of their impact on devolved matters and in order to ensure that UK policies will work effectively and be well received.

12. For devolved matters it is also important to consult the Scottish Executive as new policy proposals or the exercise of functions by UK Ministers outside Scotland may have implications for Scotland where they may call for a comparable response – particularly where new spending proposals are involved. The Memorandum of Understanding and Concordats are intended to promote exchanges of information and prior notification, so as to minimise the scope for surprises both north and south of the border.

13. In circulating proposals for collective consideration, UK Departments should state whether the Scottish Executive has been consulted; and, if not, how they will be consulted or notified. This is particularly important for the operation of the "Sewel Convention" (i.e. that the UK Parliament will not normally legislate in relation to devolved matters in Scotland without the agreement of the Scottish Parliament), on which further guidance is available - **see DGN 10 Post Devolution Primary Legislation Affecting Scotland**, available from the Devolution and Crown Dependencies Division of the Department for Constitutional Affairs. Advice on Sewel motions can be obtained from the Constitutional Branch of the Scotland Office.

The Scotland Office