

Devolution Guidance Note 4

THE ROLE OF THE SECRETARY OF STATE FOR WALES

SUMMARY

- **With effect from 1 July 1999, most of the functions of the Secretary of State for Wales transferred to the National Assembly for Wales.**
- **The Wales Office, which supports the Secretary of State, has its headquarters at Gwydyr House, Whitehall.**
- **The Secretary of State for Wales acts to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions that will have effect in Wales, and to represent the UK Government in Wales.**
- **The Secretary of State for Wales is responsible for ensuring the passage of Wales-only legislation through Parliament.**
- **Departments should copy to the Secretary of State or the Wales Office all correspondence between UK and Assembly Ministers and between senior officials, especially when it relates to primary legislation.**

Introduction

1. From 1 July 1999 most of the functions of the Secretary of State for Wales transferred to the National Assembly for Wales. Primary legislation for Wales remains with Westminster, so it is not possible to distinguish between reserved and devolved matters as it is for Scotland. However, as the Secretary of State has no programme budget, it can safely be assumed that all implementation of policy in Wales which does not remain with a UK Department is a matter for the Assembly.
2. The Secretary of State for Wales holds the post jointly with another post in Cabinet. In addition to his other ministerial duties, he continues to:
 - to act as guardian of the devolution settlement in Wales
 - to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions which will have effect in Wales
 - to represent the UK Government in Wales
 - oversee the progress through Parliament of primary legislation making separate provision for Wales

The Secretary of State is supported on ministerial matters by the Parliamentary Under Secretary of State for Wales. Both Ministers are advised on their work in relation to Welsh devolution by the Wales Office, a distinct entity within the Department of Constitutional Affairs for pay and rations only. Wales Office officials report to the Secretary of State and the Parliamentary Under Secretary of State for policy purposes.

The Secretary of State is a member of most Cabinet Committees and Sub-Committees and either he or the Parliamentary Under Secretary of State will attend all those touching on their duties in relation to Wales independently of the Secretary of State's other ministerial duties. The Secretary of State should therefore be copied in at the Wales Office for all relevant ministerial correspondence. He expects to be consulted by colleagues on the impact that their proposals will have on Wales and how they fit in with the terms of the Welsh devolution settlement.

This note considers some of the implications of that role for other Departments.

Guardian of the Devolution Settlement

3. This does not mean that the Secretary of State is a sole channel of communication between the UK Government and the Assembly. Normally Departments should deal with the Assembly direct, on the advice of the Secretary of State. The Secretary of State and his Department will:
 - give advice on the handling of business in the light of devolution;
 - act as honest broker should there be any dispute between the Assembly and Whitehall or Westminster;
 - explain the nature and consequences of devolution to the Assembly on behalf of the UK Government.
4. It helps make the Devolution Settlement work and ensures joined up government if Departments would copy to the Secretary of State or his Department all correspondence between Ministers and Assembly Ministers and between senior officials.

Voice of Wales in the Cabinet

5. The Secretary of State for Wales will speak for Wales in the Cabinet and will ensure that decisions are taken with full regard to any matters where Wales has particular interests or concerns. He will not be a mouthpiece for the Assembly but he will need to know the views of the Assembly Cabinet before deciding his own line. This is particularly important in relation to proposals for primary legislation that affect Wales.
6. Bearing this in mind; it is essential if there is to be no delay in reaching decisions that the Secretary of State and the Assembly Government are consulted at an early stage in the development of policy. Any necessary consultation of Assembly Members must, of course, wait until the proposals are made public.
7. Colleagues are asked therefore:
 - that officials should take soundings of Assembly officials as soon as possible. If these indicate that there may be clauses in the legislation dealing specifically with Wales or particular issues relating to Wales, officials in the Wales Office should be alerted.
 - that whenever possible the relevant Assembly Minister should be asked for his or her views on a proposal at the same time as policy clearance is sought from Cabinet colleagues. It would not be appropriate for the Assembly Cabinet to be aware of internal UK Cabinet discussions, so the most useful way of achieving this is to write to the Assembly Minister in similar terms asking for comments rather than agreement. However, in setting deadlines, colleagues should recognise that the Secretary of State for Wales will wish to know the Assembly's view before writing himself, whether or not he supports that view.

While this is particularly important for proposals for primary legislation, the principle should be applied to any Government initiative that affects Wales.

8. None of this affects the Secretary of State's duty under the Government of Wales Act 1998 to consult the Assembly on the Government's legislative programme. This clearly means consultation with Assembly Members and will be carried out in a formal and public way. However if there has been adequate consultation with the Assembly Cabinet, the consultation with the Assembly as a whole is less likely to raise issues which have to be addressed during the passage of legislation.
9. It will be the responsibility of the Secretary of State to steer through Parliament any clauses in legislation relating solely to Wales. Such clauses will have been included at the request of the Assembly Government, with the agreement of the lead Minister, the Secretary of State for Wales and Cabinet colleagues. However, the Wales Office will not be in a position to draft instructions to Counsel; that will be for the lead Department's Bill team after consultation with Assembly officials and lawyers. If the lead Department is content, Parliamentary Counsel is prepared to take instructions direct from Assembly lawyers, subject to the agreement of the Secretary of State for Wales.
10. During the passage of a Bill through Parliament, Wales Office officials will commission appropriate support; this could be from the Assembly or from the lead Department. It should be noted that with one junior Minister and an interest in most Bills, the Wales Office will need to look for flexibility in membership of standing Committees.

Voice of the UK Government in Wales

11. With the agreement of colleagues, the Secretary of State has always presented the UK Government's policy on matters that are of significance to Wales even if lead responsibility is formally with one of his colleagues. This should remain the case for issues which have not been devolved but in which the Assembly has a strong interest either because matters which are its responsibility are affected by UK Government actions – eg negotiations with Europe on the Assisted Areas map, Structural Funds and the CAP – or because it has responsibility for implementing all or part of UK policies – eg New Deal and Social Inclusion.
12. If colleagues are making announcements on non-devolved matters which will have a major effect in Wales, they should consider how the Secretary of State for Wales should present the policy in Wales. There are various possibilities:
 - Joint announcements/consultations. If this is appropriate, the timetable must allow for them to be bi-lingual in Wales. The Secretary of State for Wales formally to consult the Assembly on behalf of the UK Government by sending them the document prepared by the lead Department. The Secretary of State to make a parallel announcement to the Welsh media focusing on the effect in Wales. Once again, there must be sufficient warning for this to be bi-lingual, but translation of a press notice does not take long.
13. Colleagues should also be aware that, while Assembly officials are able to give the Secretary of State factual briefing under the concordat with his Department, they are not in a position to give him the UK Government line to take. Officials from the Wales Office will need to call on colleagues for this more frequently than in the past in a variety of circumstances, such as parliamentary questions, speeches, briefing for meetings, replies to MPs and members of the public etc.

Department for Constitutional Affairs (Last Updated – November 2005)