

DEVOLUTION GUIDANCE NOTE 5:

THE ROLE OF THE SECRETARY OF STATE FOR NORTHERN IRELAND

Summary

- **With effect from 8 May 2007, responsibility for most social and economic matters in Northern Ireland transferred to the Northern Ireland Assembly and its Executive Committee of Ministers.**
- **The Secretary of State for Northern Ireland continues to represent Northern Ireland interests in all matters within Cabinet, as well as retaining responsibility for policing, criminal justice and constitutional matters affecting Northern Ireland.**
- **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 policies of the UK Government.**
- **UK Departments need to distinguish between excepted, reserved and transferred matters when considering the impact of their policies on Northern Ireland. Cabinet Committee papers are not available to members of the Northern Ireland Executive and inter-ministerial correspondence will not normally be copied to them by Northern Ireland Office.**
- **The lead UK department will therefore need to make its own arrangements in terms of consulting/advising the Northern Ireland Executive and should state whether they have done so when circulating proposals for collective consideration.**

Introduction

1. The purpose of this note is to offer guidance to UK departments on the role of the Secretary of State for Northern Ireland post-devolution and on arrangements for considering the implications for Northern Ireland of UK Government policies and legislation in both the excepted/reserved fields and the transferred field.

2. Excepted matters (set out in Schedule 2 to the Northern Ireland Act 1998, as amended) cover areas of national responsibility which it is envisaged will always remain the responsibility of the UK Parliament. Reserved matters (set out in Schedule 3 to the Act) are

also matters of national policy, although the Northern Ireland Assembly can make provision for dealing with them, with the Secretary of State's consent and subject to parliamentary control. Some reserved matters, principally policing, security, prisons and criminal justice currently remain within the responsibility of the Secretary of State for Northern Ireland, although the intention is that policing and criminal justice matters will be devolved when this is requested by the Northern Ireland Assembly (The St Andrews Agreement envisages that this should be possible by May 2008). Other reserved matters remain the responsibility of other UK Ministers. Transferred matters – which are all matters that are not excepted or reserved - fall within the responsibility of the devolved administration.

The Role of the Secretary of State for Northern Ireland

3. The Secretary of State for Northern Ireland has overall responsibility for the constitutional settlement in Northern Ireland. He will promote the effective working of the institutions set up under the Belfast Agreement and encourage close working relationships between the UK departments and Northern Ireland departments.

4. The Secretary of State has responsibility for a wide range of excepted and reserved matters. These include security, policing, prisons, criminal justice, public order and elections. He also represents Northern Ireland interests in all matters in the UK Cabinet. In financial matters, he has responsibility for giving rounded advice to the Chancellor, in particular regarding any bids for additional resources which may be made by the devolved administration. There are other excepted and reserved matters which are the responsibility of the Lord Chancellor in Northern Ireland (such as judicial appointments and matters relating to the courts).

5. The Secretary of State has statutory responsibility for giving consent to Assembly Bills where these impact on reserved matters, and for forwarding all Assembly Bills for Royal Assent. If the Secretary of State considers that an Assembly Bill is incompatible with international obligations, defence or national security or public order he may decide not to submit it for Royal Assent. Similarly if an Assembly Bill is considered to have an adverse effect on the operation of the single market, the Secretary of State may not submit it for Royal Assent.

6. So far as “transferred” (or devolved) matters are concerned, it is for Northern Ireland Departments and Ministers and their counterparts in Whitehall/Westminster (and Edinburgh and Cardiff) counterparts to develop and maintain strong bilateral links throughout the normal process of developing policy and preparing legislation. The Memorandum of Understanding and, where they exist,

individual concordats between Whitehall and Northern Ireland Departments are intended to inform and strengthen these links.

The Northern Ireland Office

7. The Secretary of State's Office, as the Northern Ireland Office, has offices at Millbank and in Belfast. (There are also a number of agencies within the Northern Ireland Office including the Northern Ireland Prison Service, Compensation Agency and the Forensic Science Agency for Northern Ireland.)

8. The Northern Ireland Office continues to work closely with other UK departments, as well as with the Northern Ireland Executive, to advise on potential implications for Northern Ireland and guidance on handling of Northern Ireland related business; to seek to ensure effective consultation in both directions; and to act as honest broker where necessary in any disputes between a UK department and the Northern Ireland Executive.

9. Normally UK departments will deal directly with their Northern Ireland counterparts, both in relation to Northern Ireland aspects of the excepted and reserved matters for which they have policy responsibility and in relation to devolved matters where there is mutual interest in ensuring that the constituent parts of the UK are aware of policy developments in other.

10. Occasionally things can go wrong. The Secretary of State will want to be kept informed of any sensitive issues or problems which develop in relations between Whitehall departments and the Northern Ireland Administration. Departments should therefore copy to the Secretary of State or the Northern Ireland Office all correspondence between UK Ministers and NI Ministers. Where there is, or is likely to be, tension between a UK Department and the Northern Ireland Executive, the relevant UK Department should consult the Northern Ireland Office as soon as possible.

Consulting the Northern Ireland Executive

11. In considering the implications for Northern Ireland, UK departments need to distinguish between, but give consideration to both reserved/excepted matters and transferred matters (i.e. non-devolved and devolved matters).

12. In relation to reserved or excepted matters, UK departments have responsibilities which extend to Northern Ireland, so the implications for Northern Ireland must be considered not only to ensure that UK policies work effectively and are well received in Northern Ireland, but also in terms of their impact on transferred matters. For transferred matters, new policy proposals or the exercise

of functions by UK Ministers outside Northern Ireland may still sometimes have implications for Northern Ireland where, for example, they may call for a comparable response. The Memorandum of Understanding and concordats are intended to promote exchanges of information and prior notification, so as to reduce the scope for surprises.

13. In circulating proposals for collective consideration which may have implications for Northern Ireland, UK departments should indicate whether the Northern Ireland Executive has been consulted; and if not, how and when they will be consulted or notified. Where the First and deputy First Ministers have the lead responsibility, departments will be aware of the need to consult them jointly.

14. For more comprehensive guidance on the requirements for consultation over proposed legislation, see **Devolution Guidance Note 8: Post Devolution Legislation affecting Northern Ireland** which covers legislation affecting Northern Ireland.

Conclusion

15. This note is intended to provide basic information about the role of the Secretary of State for Northern Ireland and to offer guidance to Whitehall officials on the handling of both excepted/reserved and devolved matters relating to Northern Ireland post-devolution. It is not intended to be comprehensive and cannot cover all eventualities.

16. In case of doubt, or where departments require further advice or assistance, they should contact Devolution and Legislation Division in the Northern Ireland Office.

17. Advice on contacting Northern Ireland Departments and other transferred (devolved) matters can also be obtained from Machinery of Government Division in the Office of the First Minister and deputy First Minister.

Devolution and Legislation Division, NIO:

Clare Salters	(Head of Division)	020 7210 6591
Rachel Miller	(Head of Devolution Branch)	028 9052 3424
John Todd	(Head of Legislation Branch)	020 7210 6575
Julie Wilson	(Head of Policy Branch)	020 7210 0255

Office of the First Minister and deputy First Minister:

Neill Jackson	(Machinery of Government Division)	028 9052 8155
Deirdre Griffith	(Machinery of Government Division)	028 9052 8056