

Devolution Guidance Note 6

Circulation of Inter-Ministerial and Inter-Departmental Correspondence

SUMMARY

- **The Memorandum of Understanding between the UK Government and the devolved administrations commits us all to the principle of good communications with each other.**
- **The devolved administrations should not normally be formal recipients of Cabinet Committee correspondence. But such correspondence may be copied to them if it has some bearing on their responsibilities and there is no risk of exposing significant policy disagreement within UK Government.**
- **The Government intends that Ministers and officials in the devolved administrations should be fully involved in discussions within the UK Government about the formulation of the UK's policy position on all EU issues that touch on devolved responsibility. The general rule should be that the devolved administrations be made aware of issues which impact on their responsibilities in time for them to contribute views before the UK Government has reached its own policy conclusions.**
- **When sending correspondence to the devolved administrations, departments should ensure that the letter is sent or copied to the Minister with the lead policy interest and not direct to the First Minister by default.**
- **Any inter-Ministerial correspondence addressed or copied to the First Minister or the Deputy First Minister in Northern Ireland should also be addressed or copied to the other, in recognition of their joint constitutional status.**

Introduction

1. The Memorandum of Understanding between the UK Government and the devolved administrations (December 2001, Cm 5240) commits them all to the principle of good communication with each other, especially where one administration's work may have some bearing on the responsibilities of another, regardless of whether the issue is devolved or not. This note offers guidance on the conventions to be followed by UK Government departments when they are involving devolved administrations in matters which are the subject of correspondence between UK Government Ministers, or otherwise writing to Ministers of the devolved administrations.
2. Correspondence amongst UK Government Ministers and departments generally falls into two categories:
 - a. correspondence between members of a Cabinet Committee designed to secure a decision which is collectively binding on the Government; and
 - b. correspondence aimed at consulting or informing colleagues.

Conversely, correspondence with the devolved administrations will usually be correspondence aimed at consulting or informing the devolved administrations about UK Government policy, or a response to similar correspondence from a devolved administration, including correspondence under the auspices of the Joint Ministerial Committee. This note deals largely with those cases where the principles of the Memorandum of Understanding suggest that devolved administrations should have sight of UK Cabinet Committee correspondence.

3. In all correspondence, departments should note that correspondence revealing significant policy disagreement within UK Government should not normally be exposed to devolved administrations (although see paragraphs 13 to 16 below for an exception to this general rule).
4. When considering whether a matter has sufficient bearing on the responsibilities of a devolved administration to lead to devolved administrations being copied into correspondence, departments should note in particular that the Government intends that Ministers and officials of the devolved administrations should be fully involved in discussions within the UK Government about the formulation of the UK's policy position on all EU issues which touch on matters falling within the responsibility of the devolved administrations. In order to meet the commitment of being fully involved while the UK policy is in the process of being agreed, the general rule should be that the devolved administrations be made aware of issues which impact on their responsibilities, whether or not these are the subject of inter-Ministerial correspondence, in time for them to contribute views **before the UK Government has reached its own policy conclusions**. There are however a number of means by which this can be achieved, and departments will wish to consider, in each case, which method best achieves the commitments given in the Memorandum of Understanding and EU concordat, without exposing significant disagreements within the UK Government. These are discussed below.
5. When sending correspondence to the devolved administrations, departments should ensure that the letter is sent or copied to the Minister or Ministers with the lead policy responsibility within the administrations and not directed to the First Minister by default.
6. Under the Belfast Agreement and the Northern Ireland Act 1998, the First Minister and the Deputy First Minister are jointly responsible for convening the Northern Ireland Executive Committee and co-ordinating its work. Consequently, any inter-Ministerial correspondence

addressed or copied to the First Minister or the Deputy First Minister should also be addressed or copied to the other, in recognition of their joint constitutional status.

Cabinet Committee correspondence designed to secure collective agreement

7. As discussed above, it is important that devolved administrations should be kept informed, in a timely fashion, of discussions of issues which may have some bearing on devolved responsibilities. However, correspondence circulated to members of a Cabinet Committee at Ministerial or official level with the aim of securing an agreement which is collectively binding on UK Government should be copied formally only to colleagues on the Committee circulation list. With the exception of the Civil Contingencies Committee and its sub-committees, the devolved administrations are not members of UK Cabinet Committees. So in any other case, members of the devolved administrations should not formally be copied in on the face of the correspondence.
8. However, it follows from the commitments to good communication in the Memorandum of Understanding that copies of correspondence with some bearing on devolved responsibilities should be sent separately to one or other of the devolved administrations by the originating department or Minister, when it is judged that to do so will not entail unnecessary risk. In accordance with paragraph 11 of the Memorandum of Understanding, it is for the originator to state what, if any, restrictions there should be upon its usage and to ensure an appropriate security classification. It is also important that Cabinet Committee correspondence should explicitly raise any devolved implications and whether they have been discussed with the relevant devolved administration. So if the originator of Cabinet Committee correspondence intends that a devolved administration should have sight of it, the letter should include a formula along the following lines:

“I am copying my letter to members of [Cabinet Committee] and to Sir Gus O’Donnell shall be writing separately to the devolved administrations.”

Proceeding in this way should avoid the inadvertent copying of responses to the devolved administrations.

9. The originator should then write separately to the devolved administrations. One option is to add a short covering letter to the UK Government correspondence. Alternatively, the substance of the UK Government correspondence may be transposed to a substantive letter to the devolved administrations. In either case, letters to the Scottish Executive, the Welsh Assembly Government and/or the Northern Ireland Executive must always be copied to the Scotland Office, the Wales Office and/or the Northern Ireland Office respectively, as well as Sir Gus O’Donnell.
10. The chair of a Cabinet Committee will normally respond by rounding up correspondence initiated by a member of the Committee giving any necessary policy clearance. It is important that round-up letters summarise the views of the devolved administrations, even when these views diverge substantially from the final collective UK Government agreement reported by the letter. These views may not, however, carry the same weight as those of UK Ministers, by virtue of the fact that Ministers from the devolved administrations are not part of the process of collective agreement.
11. The round-up letter should not normally be copied to devolved administrations, particularly if it exposes significant disagreement within UK Government or between UK Government and the devolved administrations. However, where the decisions made have some bearing on devolved responsibilities, the Minister who was originally seeking policy clearance should inform the relevant devolved administrations of the UK Government’s decision.

Correspondence to consult or inform colleagues both within UK Government and devolved administrations

12. Certain non-Cabinet committees feature representation from both UK Government departments and the devolved administrations. Such committees include, for example, certain ad-hoc Ministerial Groups and the Joint Ministerial Committee (JMC), which operates, as provided for in the Memorandum of Understanding, in both plenary and functional (e.g. Europe) formats. In addition the JMC(O), which shadows the work of the JMC, may set up official sub-committees. Departments should always consider whether any Ministerial correspondence involving the devolved administrations is such that it should be conducted under the auspices of an existing ad-hoc group or a JMC.
13. All correspondence under the auspices of such non-Cabinet committees (including the JMC) should be sent to the devolved administrations as of right. No distinction will be made in these circumstances between the devolved administrations and UK Government departments. Use of a JMC net for the circulation of correspondence may obviate the need for parallel correspondence on a Cabinet Committee net. All Ministerial correspondence, including JMC correspondence and that of its functional formats, should be copied to the Secretary of State for Constitutional Affairs and Sir Gus O'Donnell.
14. Cabinet Committee circulation lists are frequently used as a convenient copy list allowing Ministers to consult or inform colleagues about current issues. Unlike formal Cabinet Committee correspondence, such correspondence may be copied directly to devolved administrations, provided that it does not reveal significant policy disagreement within UK Government or between UK Government and the devolved administrations. If the originator of such correspondence intends that it should be copied to a devolved administration, the letter should include a formula along the following lines:

"I am copying this letter to [list of UK recipients] and Sir Gus O'Donnell.
Copies also go to [list of devolved recipients]."
15. Even where the originator of correspondence includes the devolved administrations in the copy list, **it is for colleagues who respond to consider whether the same copy list should be used for their response**. If the respondent decides not to copy in the devolved administrations, the response might include a formula along the following lines:

"I am copying my reply to [list of previous UK recipients] and Sir Gus O'Donnell. You will no doubt wish to keep the devolved administrations in touch with developments."

Other correspondence with the devolved administrations

16. On many occasions, UK Ministers and officials will correspond directly with the devolved administrations. Such correspondence may not require further circulation within the UK Government, bearing in mind the primacy accorded to bilateral relations between individual Whitehall departments and their devolved counterparts. However, departments and Ministers should always consider whether to copy correspondence more widely within the UK Government, in particular to Department for Constitutional Affairs, Cabinet Office and the territorial departments. Such copies may be sent openly or silently.

Department for Constitutional Affairs (Last Updated – November 2005)