

## **Devolution concordat on health and social care: UK Department of Health and the Directorate General for Health and Social Services of the Welsh Assembly Government.**

This Concordat provides a framework for co-operation between the Department of Health and the Directorate General for Health and Social Services of the Welsh Assembly Government.

### **Introduction**

Devolution has changed the way in which the United Kingdom is governed. Without close co-operation between all four UK administrations there is the risk that developments in one administration may inadvertently constrain or put pressure on policy or finances of the other administrations. This Concordat is intended to provide a framework for co-operation between the Department of Health and the departments or directorates concerned with health and social care in the Welsh Assembly Government. It supplements the more general Memorandum of Understanding<sup>1</sup> and overarching concordats agreed between the administrations. In turn, this Concordat is supplemented by associated agreements made either at the level of the health and social care departments or between appropriate divisions and branches. In addition there may also be - as appropriate - agency arrangements, working procedures, documents, desk notes and other agreed working arrangements (including those for the funding of agreed working arrangements) which develop the principles of this Concordat and give specific guidance about putting these into practice.

### **General Principles**

The parties jointly affirm their commitment to co-operate on matters affecting the NHS, public health, wider health issues and social care, seeking to work in an open and helpful manner, with good communication and early involvement of the other parties when appropriate. This will build on existing working relationships, with officials continuing to maintain free, informal and regular contact.

The parties will inform each other at the earliest reasonable opportunity of issues - including the forming of policy, proposals for legislation, and the timing of public announcements – particularly those which are likely to be of mutual interest. In coming to decisions or developing policies or legislation which may have an impact financially or otherwise on other parties, or which may constrain others' policy development, each party will seek the views of

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<sup>1</sup> Memorandum of Understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee. Cm 5240

those potentially affected at the earliest reasonable opportunity and be mindful of those views in taking any decisions.

The Department of Health should be consulted on issues with possible implications for health and social care that lie within the competence of the Welsh Assembly Government but that also impact on interests within the competence of the European Union.

The parties will work together, where appropriate, to ensure that public bodies in the health and social care field continue to operate effectively.

Consultation and liaison arrangements will be maintained and developed between the Department of Health's Heads of Health and Social Care Professions/Chief Officers and their counterparts in Wales, and each party will provide professional advice to the other if and as requested.

### **Operation**

This Concordat does not create legal obligations or restrictions on any party, though it is the intention that the Directorate General for Health and Social Services of the Welsh Assembly Government and the Department of Health will manage their business with regard to this Concordat wherever possible. It is recognised that, in exceptional circumstances, there may be occasions where full adherence is impractical. In these cases, the parties will act as closely as possible in line with the spirit of the Concordat and will try to rectify any shortfall at the earliest opportunity. The parties will take steps to ensure these exceptions are kept to the minimum.

### **Disputes**

Resolution of disputes will take place in accordance with the principles and procedures set out in the Memorandum of Understanding. The parties are committed to resolving issues at official level where possible, or if it becomes necessary, at Senior Civil Service level. Only exceptionally will matters be referred to Ministers or to the Joint Ministerial Committee.

### **Confidentiality of Information**

The MoU sets out the principles that govern the duty of confidence between the UK Government and the devolved administrations. DH and the Assembly Government will state, when sharing information, the restrictions, if any, that should apply; both parties will endeavour to treat information received in accordance with any restrictions. In the event of one administration receiving a freedom of information request from a third party relating to information it has received from the second administration, the former will seek the latter's views on disclosure, and ultimately make a decision about disclosure in accordance with 'access to information laws' and, in the case of the Assembly Government, the Assembly Government's Code of Practice on Access to Information.

## Legislation

Devolution Guidance Note 9<sup>2</sup> sets out guidance to Whitehall Departments on arrangements for managing Bills affecting the responsibilities of either the National Assembly for Wales or the Assembly Government. It sets out the expectations of the UK Government Cabinet Committee on Legislation (L Committee) in giving effect to this policy and how to manage it to ensure smooth running of the UK Government's legislative programme. L Committee expects devolution issues to be resolved by the time a Bill is brought before the Committee prior to its introduction into Parliament.

Devolution Guidance Note 16<sup>3</sup> sets out guidance on the procedure for conferring legislative competence on the National Assembly for Wales by Order in Council. These Orders must be agreed between the Assembly Government and the UK Government, and then approved by the National Assembly for Wales and Parliament.

The link below links to guidance to Assembly Government departments on liaison with UK Government over parliamentary bills, legislative competence orders and Assembly measures.

<http://wales.gov.uk/caec/publications/legislation/guidanceliaiseuk/e.doc?lang=en>

## Finance

Any party to this Concordat will, at the earliest reasonable opportunity, inform and consult any other party about proposals for new policy initiatives or changes to existing policy that directly or indirectly have an impact on the finances of that other party or bodies that they fund.

Any additional costs to the Welsh Assembly Government arising directly from policy changes developed and implemented by the Department of Health, and which are not subject to an increase through the Block and Formula rules, should be identified and discussed jointly prior to decision by the Department and the Welsh Assembly Government, as should any additional costs to the Department arising directly from policy changes developed and implemented by the Welsh Assembly Government.

In general, in line with HM Treasury's Statement of Funding of October 2007,, where one party or bodies under its jurisdiction imposes costs on the other, and where other arrangements do not exist automatically to adjust for such extra costs, it will be right for the party whose decision leads to higher or extra costs to make any necessary financial transfers. However, there will be no adjustment to Departmental Expenditure Limits to accommodate additional costs incurred by a devolved administration as a result of decisions by the United Kingdom Government which the United Kingdom Government is

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<sup>2</sup> See "Devolution Guidance Note 9: Post-Devolution Primary Legislation Affecting Wales".

<sup>3</sup> See "Devolution Guidance Note 16: Orders in Council under section 95 of the Government of Wales Act 2006".

expecting its departments with parallel responsibilities to absorb within existing spending plans.

## **Services**

The Department of Health and the Welsh Assembly Government may provide each other with administrative, professional or technical services by agreement, including by agreements made under Section 83 of the Government of Wales Act 2006. Each may charge the other for services provided; charges will not generally be made where such services have been provided free in the past.

## **Associated agreements and guidance**

Associated with this Concordat are a number of agreements and guidance documents between relevant parts of the Welsh Assembly Government. These address working relationships related to specific areas of mutual interest. If appropriate, they may be agreed at division or branch level, and may be bilateral or multilateral. Additional agreements or guidance may be made at any time, and all agreements or guidance will be kept under regular review and may be updated individually as required, with the agreement of the relevant officials.

The parties will ensure that all relevant staff are aware of the terms of the Concordat and associated agreements or guidance. Any written guidance will be freely available to the other parties. In many cases it will be appropriate to seek the views of staff in the other administrations in order to make sure that guidance fully meets their needs. The agreements and guidance should be consistent with the terms and spirit of this Concordat.

Following changes to the Concordat or associated agreements, working arrangements, guidance, agreements and any other related documents will be updated as required.

## **Review**

*This Concordat will be kept under regular review and will be updated as necessary.*