

Devolution concordat on health and social care

UK Department of Health and the Scottish Executive Health Department.

November 2005

Introduction

Devolution has changed the way in which the United Kingdom is governed. The creation of the Scottish Executive, and the other devolved administrations allows greater divergence in policy making to address local needs and priorities. Without close co-operation between the UK Government and the Scottish Executive 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 Scottish Executive Health Department (otherwise referred to in this concordat as 'the parties'). A separate Concordat covers relations between the Department of Health and the National Assembly for Wales and the Northern Ireland Executive. It supplements the more general Memorandum of Understanding and overarching concordats agreed between the UK Government and devolved administrations. In turn, this Concordat may be 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 possible opportunity of issues - including the formulation of policy and the timing of public announcements - which are likely to be of mutual interest. The parties will ensure that where proposals for legislation are concerned the responsible administration gives as much notice of those proposals as possible to the other party. For its part the other party will endeavour to ensure that necessary policy decisions are taken as soon as possible. Where information is shared in confidence for this purpose, each party will have regard to the respective business management aspects of taking forward policy proposals in the legislative arena, to ensure that members of the relevant legislature hear their own future business first.

Where the Scottish Executive is bringing forward initiatives within devolved areas, but which impact on interests within the competence of the European Union, the UK Department of Health should be consulted.

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 the Scottish Executive. The Heads of Health and Social Care Professions/Chief Officers for the Scottish Executive will provide advice to the Executive. In addition, they will provide professional advice to the United Kingdom Ministers if and as requested. Similarly, the Department of Health's professional officers will provide advice to the Scottish Executive when appropriate.

Operation

This Concordat does not create legal obligations or restrictions on either party, though it is the intention that the Scottish Executive and the Department of Health will conduct their business with all due regard to the terms of this Concordat wherever possible. It is recognised that, in exceptional circumstances, there may be occasions where this is impractical. In these cases, the parties will work together to 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

Every effort will be made to avoid disputes. Should a dispute arise which cannot be handled by the officials concerned, it will be considered first by senior officials and then, if need be, by the relevant Ministers to seek a mutually acceptable resolution. Referral to the Joint Ministerial Committee mechanisms as provided for in the Memorandum of Understanding will be the option of last resort.

Confidentiality of Information

As set out in the Memorandum of Understanding, the parties will, subject to any freedom of information considerations or legal obligations, maintain the confidentiality of any information received from each other in confidence. The party providing the information will state clearly what restrictions if any should be applied.

Finance

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

Any additional costs to the Scottish Executive 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 Scottish Executive, as should any additional costs to the

Department arising directly from policy changes developed and implemented by the Executive.

In general, in line with HM Treasury's Statement of Funding dated 31 March 1999, 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 expecting its departments with parallel responsibilities to absorb within existing spending plans.

Services

The Department of Health provides a number of services to, or on behalf of, the Scottish Executive Health Department. Where issues arise in relation to the provision of these services, both parties will work to resolve them to mutual satisfaction. Any changes to the services provided (or the service providers) will not be made without prior consultation with the Scottish Executive Health Department.

Associated agreements and guidance

Associated with this Concordat are a number of agreements and guidance documents between relevant parts of the administrations. 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 staff are aware of the terms of the Concordat and associated agreements or guidance. Any written guidance will be freely available to the other party. In many cases it will be appropriate to seek the views of staff in the other administration 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, at a maximum of three yearly intervals. The date of this review was November 2005.