

CONCORDAT BETWEEN THE WELSH GOVERNMENT AND THE UK MINISTRY OF JUSTICE

Introduction

1. This Concordat sets out arrangements for consultation and co-operation between the Welsh Government and the UK Ministry of Justice, covering exchanges of information (including the terms on which information is shared), justice impacts, access to services, resolution of disputes and review of relations.¹ Among other things, it seeks to ensure that:
 - the Ministry of Justice considers the interests and responsibilities of the Welsh Government when designing and implementing UK justice policy and activities likely to have an impact in Wales;
 - the Welsh Government considers the interests and responsibilities of the Ministry of Justice when exercising devolved functions; and
 - there is clarity and accountability, enabling productive working relationships and improved outcomes.
2. This Concordat is non-statutory and is not legally binding. It is a working document of guidance which clarifies the working relationship and provides the Welsh Government and Ministry of Justice with a set of principles by which both parties jointly agree to abide.
3. The Wales Office is responsible for oversight of the Welsh devolution settlement and ensuring UK Government policy works effectively in Wales and has a key responsibility for promoting effective working relations between the UK and Welsh Governments.
4. A Memorandum of Understanding (MoU) setting out common provisions for the working relationships between the UK Government and the devolved administrations in Wales, Scotland and Northern Ireland, provides the foundation for this Concordat.² The core principles underlying the MoU include, that:
 - bilateral agreements, known as Concordats, will set out the working practices between individual UK departments and the devolved administrations (DAs);
 - most matters requiring communication with one or more of the other administrations will be handled routinely by officials or Ministers; and
 - where a matter is not capable of being handled bilaterally, it will be referred to the Joint Ministerial Committee (JMC) which provides central coordination of the overarching relationship between the UK Government and the devolved administrations.³
5. This Concordat is without prejudice to any changes to the Memorandum of Understanding or the UK Government's Devolution Guidance Notes.

¹ References to the Welsh Government include Welsh Government, Ministers and officials. References to the Ministry of Justice include Ministry of Justice Ministers and officials, Her Majesty's Courts and Tribunal Service (HMCTS) and Her Majesty's Prison and Probation Service (HMPPS). The MoJ's arm's-length bodies (ALBs) may also have an interest in, but are not obligated to follow, the terms set out in this Concordat. Indeed, this Concordat does not affect any direct relationship between ALBs and the Welsh Government. These ALBs include, but are not limited to: CAF/CASS England, Judicial Appointments Commission, Legal Services Board, Parole Board and Youth Justice Board for England and Wales.

² Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee (June 2011)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

³ The purpose of the JMC is to provide central co-ordination of the overall relationship between the devolved administrations; to keep arrangements under review and to consider disputes between the administrations.

General Principles

6. Good working relationships between the Welsh Government and UK Government departments are vital to the effective delivery of public services and to ensure that the business of government continues to be conducted smoothly and efficiently. The Welsh Government and the Ministry of Justice will co-operate to the fullest possible extent to achieve this aim, in particular by recognising and taking into account their respective responsibilities and interests, working on the basis of transparency, trust and consensus. They may decide to act jointly on particular matters, for example, by issuing joint advice or guidance to local agencies.
7. Both UK Government and Welsh Government ministers and officials should follow the terms of this Concordat and respect the respective authority of each legislature so that policy and new legislation relating to justice are made in the interests of the people of Wales.

Context

8. The Government of Wales Act 2006 (GOWA) defines the powers of the National Assembly for Wales (the National Assembly) to legislate for Wales. The permanence of the National Assembly and the Welsh Government is recognised by UK Government and Parliament as part of the constitutional arrangement provisions inserted by the Wales Act 2017.⁴
9. Section A1 of the GOWA (as inserted by section 1 of the Wales Act 2017) also recognises the law that applies in Wales includes a body of Welsh law made by the National Assembly and the ability of the National Assembly and the Welsh Ministers to make law forming part of the law of England and Wales.
10. The Wales Act 2017 prescribes matters that are reserved to the United Kingdom Parliament (see new schedule 7A to GOWA).⁵ Matters which apply in Wales and are not listed as reserved or restricted are devolved to the National Assembly. Although the UK Parliament may also legislate on devolved matters (see Part 1(2)), section 107(6) of GOWA 2006 (as amended) acknowledges that it will not normally do so without the consent of the National Assembly.⁶
11. Welsh Ministers have a wide range of functions that have been conferred on or transferred to them by or under GOWA, various Transfer of Functions Orders and other Acts of Parliament. The Welsh Government's responsibilities interact to various degrees with the responsibilities of the Ministry of Justice. The principal areas of interaction between the respective functions and responsibilities of the Ministry of Justice and the Welsh Government are summarised in the **Annex** to this Concordat.⁷

Communication and Consultation Arrangements

12. The Ministry of Justice and the Welsh Government are committed to the principle of good communication, especially where one administration's work may have some bearing upon the responsibilities of the other administration, and to work together where appropriate on matters of mutual interest. Such communication will not constrain each other's discretion

⁴ Section A1 of GOWA 2006 as inserted by Section 1 of Wales Act 2017

⁵ The Wales Act 2017: http://www.legislation.gov.uk/ukpga/2017/4/pdfs/ukpga_20170004_en.pdf

⁶ Refer to Wales Act 2017 Part 1(2) *Convention about Parliament legislating on devolved matters*

<http://www.legislation.gov.uk/ukpga/2017/4/part/1/crossheading/convention-about-parliament-legislating-on-devolved-matters/enacted>

⁷ Just as the functions of the Ministry of Justice are usually vested in their Ministers, functions of the Welsh Government are usually vested in its Ministers ('the Welsh Ministers'). It is also possible for functions to be vested in the First Minister and the Counsel General.

but will enable representations to be made about matters that need to be fully considered in developing policy. The Welsh Government and the Ministry of Justice will in such communication, and in confidence where necessary, seek to:

- alert each other as soon as practicable to relevant developments affecting the justice system within their areas of responsibility, wherever possible prior to publication;
 - give appropriate consideration to each other's views; and
 - where appropriate, establish arrangements that allow for policies for which responsibility is shared to be drawn up and developed jointly between the administrations.
13. The nature and timing of such consultation should allow a reasonable opportunity for comments to be made and considered and so should be initiated as early as possible in the policymaking process. The **Annex** to this Concordat sets out the areas in which consultation and exchange of information between the administrations is likely to be necessary, but does not limit opportunities for consultation and coordination to these areas alone.
14. Lead officials in both administrations should maintain regular contact with their opposite numbers, coordinating through the Justice Policy team in the Welsh Government and the Justice Devolution team in the Ministry of Justice and/ or the Senior Lead for the Ministry of Justice in Wales and the Crime and Justice Team in the Welsh Government, as appropriate.⁸ The Wales Office should also be involved in discussions between the two administrations, as appropriate⁹.
15. Discussions on matters of mutual interest will take place as and when appropriate. Accordingly, officials may:
- establish working groups, committees or other regular or ad hoc meetings (e.g. The Justice in Wales Strategy Group);
 - ask to be represented on statutory bodies or particular interest groups (e.g. the Independent Advisory Committee on Justice in Wales);
 - invite representatives of the Ministry of Justice or the Welsh Government (or arm's-length bodies) to attend each other's internal meetings;
 - create integrated project teams, underpinned by formal project documentation; or
 - establish more specific agreements (e.g. service level agreements) between parties.

Exchange of information, statistics and research

16. The Welsh Government and the Ministry of Justice will, as far as it is in accordance with data protection legislation, aim to provide each other with as full and open as possible access to statistical and research data and, where appropriate, representations from third parties. The information to be shared may include policy papers, analysis and statistics and other factual information and, where appropriate, may take the form of oral briefings. Each administration will aim to provide any information that may be reasonably requested by the other to enable it to carry out its responsibilities effectively, provided that:
- (a) this is practicable;
 - (b) it would not involve disproportionate cost; and
 - (c) the information is available in reasonably accessible form.

⁸ The Senior Lead in Wales was appointed following recommendation (vii) of the Justice in Wales Working Group for the MoJ to consider the creation of a single point of contact to lead the overall co-ordination of its work in Wales, working closely with partners in other organisations and the Welsh Government.

⁹ Details of the role of the Secretary of State for Wales in devolution matters are set out in Devolution Guidance Note 4 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60980/role-secretary-state-wales.pdf

17. The Ministry of Justice will ensure that the Welsh Government has access to data already collected about Wales on law, order and the protective services when it is published. Unpublished data will be shared on request where appropriate and practicable, and on any other topic where the Ministry of Justice is or becomes responsible for collecting or compiling data covering Wales. The Ministry of Justice will consult the Welsh Government if it proposes to change the geographical areas it uses for collecting and analysing data about Wales.
18. The emphasis will always be on exchanging information where possible; where any of the three provisos is not met, resolution of issues will be advanced on a case-by-case basis. Further information is set out both in the MoU and associated guidance, including the need to observe any limitations and constraints imposed by the laws applying in England and Wales, Scotland or Northern Ireland.

Provision of administrative, professional or technical services

19. In accordance with Section 83 of GOWA, the Ministry of Justice and the Welsh Government may provide each other with administrative, professional or technical services to assist in exercising their respective responsibilities. Any such arrangement does not affect the responsibility of Welsh Ministers nor the Ministry of Justice. Each may charge the other for services provided, except where services have been provided free of charge in the past such as:
 - provision of statistics about Wales by one party to the other, whether or not they have previously been published; and
 - one party checking data or information for the other party.

Legislation

20. In accordance with the overarching MoU, the UK Government's Devolution Guidance Note (DGN) 18, and the Welsh Government's Reciprocal Guidance in respect to DGN 18, the Welsh Government and the UK Government will endeavour to consult each other from an early stage on the development of legislative proposals which impact on the other's policy and practical responsibilities.¹⁰ Consultation will be undertaken on the basis that any information exchanged will be held in confidence and will not be shared more widely unless stated otherwise in order to preserve a safe space for policy development for both administrations.
21. In addition to specific statutory requirements that Ministers in the Ministry of Justice may have to consult Welsh Ministers under the Transfer of Functions Orders or Acts, there are specific powers under sections 80(3) and 82(2), (3), or (5) of GOWA 2006, which relate to implementation of EU and international obligations by Welsh Ministers.
22. The Ministry of Justice agrees to consult the Welsh Government as early as possible about proposed UK legislation or initiatives which will impact on Welsh responsibilities to ensure provision of devolved services is not disrupted.
23. The Welsh Government agrees to consult the Ministry of Justice as early as possible about provisions in proposed National Assembly Bills affecting Minister of the Crown functions, which impact, directly or indirectly, on the responsibilities of the Ministry of Justice.
24. The Welsh Government and UK Government will ensure that there is sensible and timely dialogue on proposals which are likely to have an impact on either parties' justice

¹⁰ Details of the processes to be followed in such cases are set out in Devolution Guidance Note 9 – <https://www.gov.uk/government/publications/devolution-guidance-notes>

responsibilities (civil and criminal). This includes, but is not limited to, the introduction of new offences or rules of procedure.

Justice Impact Assessment

25. In accordance with section 110A of GOWA (as inserted by section 11 of the Wales Act 2017), Welsh legislation with a potential impact on the justice system must be accompanied by a statement of the assessment of that impact.¹¹
26. Section 110A does not require agreement of that assessment by UK Ministers. Its purpose is to ensure that potential impacts, including cost and savings implications, on the justice system are identified and planned for at an early stage, both to make best use of public funds and to make sure that service provision within the justice system is not disrupted. The completion of a justice impact assessment is a core part of good policymaking and of benefit to both parties by:
 - helping policy makers across each government take account of and minimise the impact of new policies on the justice system;
 - ensuring policy officials can plan for how new policies will be managed; and
 - providing information for ministerial updates and decisions.
27. In accordance with section 110A, the form of the justice impact assessment and the manner in which it is to be made are to be determined by the National Assembly and must be published.
28. The Welsh Government will engage with the Ministry of Justice as early as practicable regarding each Assembly Bill and any subordinate legislation or policy proposal that could potentially have an impact on any aspect of the non-devolved elements of the justice system. Similarly, the Ministry of Justice will engage with the Welsh Government as early as practicable regarding primary and subordinate legislation or policy proposals that could potentially have an impact on any aspect of the Welsh devolved elements of the justice system.
29. The UK Government's policy is to minimise the creation of new criminal offences where possible. Consequently, although it is for the Assembly to determine legislation on criminal offences for a devolved purpose and for the WG to develop legislative proposals for criminal offences relating to devolved matters, one of the Ministry of Justice's functions is to scrutinise all legislation which extends to England and Wales and contains provision for criminal offences, to ensure that they are appropriate and proportionate. The Welsh Government recognises that it is good practice to engage early with the Ministry of Justice on all proposed criminal offences to be created by its legislation so that Welsh Ministers' decisions are informed by a full understanding of the justice implications. More broadly, both parties agree to consider the longer-term implications of cautions, warnings and criminal sanctions and to take a proportionate approach when developing criminal justice legislation.
30. The UK Government's policy is also to minimise the impact of legislation on the courts where possible. The Welsh Government recognises that it is good practice to engage early with the Ministry of Justice on its proposals for legislation that may impact the courts and tribunals of England and Wales.
31. Both parties agree to consider the potential impacts of new civil measures on courts and tribunals when developing policy and legislation.

¹¹ Standing orders must include provision requiring the person in charge of a Bill, on or before the introduction of the Bill, to make a written statement setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill ("a justice impact assessment").

32. The Ministry of Justice agrees that all information provided by the Welsh Government in the course of preparation of the justice impact assessment is for internal use only and not for publication unless required by law.

Finance

33. Each administration must consider the financial implications of its policies on the other administration. This includes where MoJ policies have an impact on the Welsh Government in respect of devolved services and where Welsh Government policies have an impact on the MoJ.

Judicial Engagement

34. This Concordat recognises, and does not affect, separate existing arrangements in place for the Welsh Government engaging the judiciary, referenced in Desk Instruction 7. Engagement with the judiciary on Minister of Crown or Lord Chancellor's functions in relation to the judiciary or on judicial policy will continue to be made through the MoJ Judicial Policy team.

The Welsh Tribunals

35. The responsibilities of the Welsh Government and the Ministry of Justice overlap in respect of some of the Welsh Tribunals listed in Part 3 of the Wales Act 2017. These tribunals are devolved bodies, but the appointment, dismissal and disciplinary functions in respect of some of their members rest with the Lord Chancellor. The Ministry of Justice, the Judicial Office and the Judicial Complaints and Investigations Office and the Welsh Government's Tribunals Unit will collaborate on these matters as needed. In addition, where functions rest with the Welsh Ministers, but there is no independent capacity in Wales to exercise those functions, the Welsh Tribunals Unit may enter into an agency agreement with one of the judicial bodies as in para 34 above. Such an agreement is in place in respect of recruitment services which the Judicial Appointments Commission provides to the Welsh Government.

Parliamentary/ National Assembly for Wales Business

36. The Ministry of Justice and the Welsh Government will provide each other, so far as appropriate and practicable, with information necessary to meet their respective responsibilities to Parliament and the National Assembly for Wales in accordance with the intergovernmental MoU.

The Welsh Language

37. The Welsh Government's duty is to promote and facilitate the use of Welsh and to ensure that the Welsh language is treated no less favourably than the English language. The UK Government is similarly committed to ensuring that Welsh and English are treated equally wherever possible in the delivery of non-devolved public services in Wales. The Ministry of Justice will develop legislation, policies and services in accordance with its Welsh Language Scheme.¹²
38. When discussing the development of legislation, policies and services in Wales, the Welsh Government and Ministry of Justice should discuss the impact of the proposed legislation, policy or service on the Welsh language, and should also discuss the extent to which funding

¹² <http://www.justice.gov.uk/publications/corporate-reports/moj/2010/welsh-language-scheme>

programmes, which will support activities to be undertaken in Wales, will fund the delivery of those activities in the Welsh language.

Confidentiality

39. The overarching MoU sets out the principles that govern the duty of confidence between the UK Government and Welsh Government¹³, including acknowledgement that:
- each administration will wish to ensure that the information it supplies to others is subject to appropriate safeguards and in accordance with data protection legislation in order to avoid prejudicing its interests;
 - in certain circumstances where a duty of confidence may arise, each administration will between themselves respect legal requirements of confidentiality; and
 - each administration can only expect to receive information if it treats such information with appropriate discretion.
40. The Ministry of Justice and the Welsh Government should state when sharing information with each other what, if any, restrictions there should be upon its usage and both parties will endeavour to treat information they receive in accordance with any such restrictions. In the event of one administration receiving a request from a third party for information it has received from the other administration, it will seek the other administration's views on disclosure but will ultimately make a decision in accordance with access to information and data protection laws and, in the case of the Welsh Government, its Code of Practice on Access to Information.
41. If any doubts are raised about whether information should be provided by one party to the other, the matter should be referred in the first instance to the Intergovernmental Relations teams within the Welsh Government and Ministry of Justice (the Justice Policy Team and the Justice Devolution Policy Team respectively), or to the Wales Office.

Correspondence

42. Both parties are committed to ensuring that the handling of correspondence is given a high priority and managed in accordance with the principles set out in the overarching MoU and the procedures set out in:
- *Devolution Guidance Notes 1 (Common Working Arrangements); and*
 - *Devolution Guidance Notes 2 (Handling correspondence under Devolution).*¹⁴
43. The equivalent guidance produced by the Welsh Government should also be followed, together with the relevant openness regime.

Resolution of Disputes

44. Avoidance and resolution of inter-governmental differences, disagreements and disputes will take place in accordance with the principles and procedures set out in the protocol for the avoidance and resolution of disputes in section A3 of the MoU. The Ministry of Justice and the Welsh Government are committed to resolving issues at the appropriate official level. Only in exceptional circumstances, where a dispute cannot be resolved bilaterally or through the Wales Office, will matters be referred to Ministers or to the Joint Ministerial Committee.

¹³ MoU between the UK and the Devolved Administrations *Confidentiality* No. 12
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

¹⁴ <https://www.gov.uk/government/publications/devolution-guidance-notes>

Review

45. This Concordat may be amended at any time if both parties agree in writing to the changes.
46. Officials of the Welsh Government and the Ministry of Justice will jointly review the Concordat regularly and a review may be requested at any time by either party if they consider it necessary. Substantive changes may require ministerial approval.
47. In addition to a joint review of the Concordat, Welsh Government, Ministry of Justice and the Wales Office officials may wish to meet at least annually to review relations with a view to addressing ongoing issues and considering a forward look of respective programmes for legislation and executive action.

Agreement

48. The Concordat was agreed between the Ministry of Justice and the Welsh Government on 21 March 2018.

ANNEX 1

AREAS OF INTERACTION BETWEEN THE RESPONSIBILITIES OF THE MINISTRY OF JUSTICE AND THE WELSH GOVERNMENT REQUIRING CLOSE CONSULTATION AND/ OR EXCHANGE OF INFORMATION

The Ministry of Justice is responsible for, among other things, courts, non-devolved tribunals, judges, civil and criminal proceedings (including rules of evidence, procedure and enforcement and, in criminal proceedings, sentencing), prisons and offender management, the legal profession and legal aid in England and Wales.¹⁵

The Welsh Government's legislative competence and areas of devolved power may interact with the responsibilities of the Ministry of Justice, particularly in respect of tribunals, prisons and probation. Specific examples of this include the cross-deployment of judges between reserved and devolved tribunals and the provision of services for offenders of all ages across health, education, social services and training.

Decisions taken by the Ministry of Justice in some non-devolved areas may impact on areas of responsibility devolved to the Welsh Government. When this arises, consultation and the exchange of information in accordance with this Concordat will be necessary.

An illustrative, non-exhaustive, list of these issues follows:

- Offender management matters, for example, in relation to health and education, social services and housing;
- Youth justice issues that touch on, for example, the Welsh Government's social welfare or local government responsibilities and devolved services;
- Criminal, Civil, Family and Administrative law and justice matters, for example, relating to devolved tribunals;
- Safeguarding and social welfare issues, for example, where additional duties are placed on probation or Youth Offending teams; and
- Family court issues that affect the responsibilities of CAFCASS Cymru (the family court advisory service in Wales).

¹⁵ See New Schedule 7A to the Government of Wales Act 2006