



Llywodraeth Cymru  
Welsh Government

POLICY AND STRATEGY

# Concordat between the Department for Education and the Welsh Government

This concordat sets out a framework for co-operation between the Department for Education and the Welsh Government.

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# Introduction

1. This concordat establishes an agreed framework for co-operation between the parties, the Welsh Government (“WG”) and the UK government’s Department for Education (“DfE”). This includes all matters arising from DfE’s responsibilities which impact directly or indirectly on the functions of the Welsh Ministers and vice versa. Part 4 of the Government of Wales Act 2006 confers upon the National Assembly for Wales a broad range of primary law making powers in relation to subjects that are listed under 20 headings and set out in [Schedule 7 to that 2006 Act](#). The National Assembly can legislate by passing Acts of the Assembly in relation to those subjects. The subject areas are areas in which the Welsh Government has executive functions. The vast majority of the Welsh Government’s executive functions relating to education are exercised in practice by the Minister for Education and Skills.
2. The concordat follows the principles set out in the Memorandum of Understanding between the UK government and the devolved administrations. It is non-statutory and is not intended to constrain either DfE’s or WG’s freedom to operate in areas for which they are each responsible. However, WG and DfE agree to honour the principles and obligations set out in this concordat.
3. This co-operation is for the mutual benefit of both parties. It is intended to provide assurance that working relationships will be conducted in an agreed and helpful manner. This is underpinned by good communications in both directions and the avoidance of surprises for either party. This will assist the efficient, effective and economical delivery of public services for which both parties are responsible and benefit the users of those services.

4. The 2 parties recognise that there will be policy areas in relation to children's services and the Children's Commissioners (refers to the Children's Commissioner for Wales and the Children's Commissioner for England) which will require the engagement of other departments within the UK government and WG. Each party will undertake to secure that engagement and, if necessary, ensure that those departments make contact with their counterparts if needed.

## **Specific functions where responsibility has not been devolved**

5. DfE retains a number of important functions on an England and Wales basis. It is particularly important that DfE and WG continue to maintain close contact on issues arising in these areas. Specific arrangements for consultation and exchange of information are set out in separate annexes for:
  - Teachers' pay and conditions of service and pensions (Annex A)
  - Education statistics (Annex B)
6. Other important areas of work for England and Wales which, are non-devolved, will require close co-operation between WG and DfE, are:
  - European and international education issues, such as UK-wide EU and international programmes and relations with multi-lateral organisations
  - Teacher discipline policy ([Footnote 1](#))
  - Inter Country Adoption
  - DfE undertakes a "UK State Party" co-ordinating role in relation to other UK government departments and devolved administrations/jurisdictions, on the United Nations Convention on the Rights of the Child
7. Areas where DfE and WG has an interest where other UK government departments lead:
  - Family justice, where both DfE and MoJ have a policy lead, non-devolved in the case of Wales, but not local authorities' roles in care proceedings or Cafcass - family law and family proceedings is a nondevolved matter except in a couple of specific circumstances
  - Youth crime and justice ([Footnote 2](#))
  - Science policy

- Welfare reform
- Child Poverty targets
- The UK's counter terrorism strategy, CONTEST ([Footnote 3](#)).

## **Matters that require very close co-operation**

8. Matters that will require very close co-operation between DfE and WG, include qualifications (where WG and DfE will continue to discuss the implications of the 3-country qualifications framework covering England, Wales and Northern Ireland); licensing children to take part in performance; child employment legislation; and the disclosure and barring arrangements under the Safeguarding Vulnerable Groups Act 2006, which is partly a devolved matter in Wales, but is mostly not devolved.
9. The WG is of the view that the criminalisation of the physical punishment of children is devolved. The DfE and the UK Government do not agree that this matter is devolved. Both parties agree that if there are any proposals to legislate to criminalise the physical punishment of children, then they will notify the other party of the proposals as soon as possible.

## **Consultation and exchange of information**

10. There are various statutory requirements placed upon the UK Government to consult the Welsh Government. There is also guidance on consultations between the UK Government and the Welsh Government in Devolution Guidance Notes 9 and 17. In addition to these, DfE will consult WG in matters relating to Wales about changes it is proposing to legislation ([Footnote 4](#)) policies and programmes. These will relate to matters referred to within this concordat or those which might have an impact on matters within the executive competence of the Welsh Ministers or the legislative competence of the National Assembly of Wales. In turn, WG will consult DfE about any proposed legislation, policy or programme developments in relation to its responsibilities which could impact on DfE's responsibilities.
11. The parties confirm their commitment to proactively consult and exchange information in a timely and helpful manner. This is to enable the policy

implications of initiatives to be examined and representations to be made if necessary. In accordance with the spirit of the framework in the Memorandum of Understanding, advance notification of policy initiatives, consultations and associated announcements will take place on a reasonable timescale before the announcement, wherever possible at least one month before any announcement is made.

12. Each party will give appropriate consideration to the views of the other administration. In the case of legislative proposals, advance notification and consultation will take place on a similar timescale before the introduction of primary legislation and the making of subordinate legislation. In the case of press releases, 48 hours notice will be given where possible. In addition to such consultation, one party will notify the other of any official comment it intends to make when the other's initiative is made public.
13. The parties confirm their commitment to provide access which is as full and open as possible to policy and other information including statistics and research and, where appropriate, to representations from third parties. In accordance with the spirit of the framework set out in the Memorandum of Understanding whenever practicable and reasonable each party undertakes to provide within 5 working days any information that may be requested by the other to enable them to carry out their functions effectively. These arrangements will be supplemented by arrangements concerning statistics in the Memorandum of Understanding (paragraphs 10 and 11 of the Memorandum refer), and to those in the statistics annex to this concordat (Annex B).
14. In accordance with the Memorandum of Understanding, both parties will encourage joint working where they agree that there would be advantages for the development of policy or the delivery of services. This can include regular or ad hoc bilateral meetings and officials of one party attending working groups or committees sponsored by the other party, either as formal members or observers.
15. In planning publicity campaigns relating to matters of mutual interest, WG and DfE will inform each other of their intentions and consider whether it would be beneficial to have a joint or co-ordinated campaign.
16. Where appropriate, DfE and WG will each give adequate notice of meetings with external contacts in which there will be a discussion of topics likely to impact on the responsibility of the other, and will consult on lines to take and

share appropriate papers and outcomes, in a timely manner.

17. Each party will treat information received from the other in accordance with any restrictions that the sending party may specify.

## **Impact assessments**

18. Section 76 of the Government of Wales Act 2006 requires Welsh Ministers to make a code of practice setting out (amongst other things) their policy on the carrying out of regulatory impact assessments in connection with subordinate legislation to be laid before the National Assembly. The Welsh Ministers have made such a code. To save duplication of effort, DfE and WG will co-operate in producing impact assessments in cases where they are both proposing to make similar legislation.

## **Consultation on cross border bodies**

19. DfE and WG will act in accordance with Section 63 of the Government of Wales Act 2006.

## **Appointments**

20. To involve Welsh Ministers in the appointments to public bodies whose coverage includes Wales, and in accordance with the requirements laid out in the Code of Practice for Ministerial Appointments to Public Bodies and section 63 of Government of Wales Act 2006, DfE will:
  - a. inform WG in advance of starting the process for any appointment in order to ensure that it can facilitate publicity to potential candidates in Wales
  - b. where section 63 of the Government of Wales Act 2006 applies, involve Welsh Ministers throughout any appointments process to ensure that Welsh interests are properly represented on crossborder public bodies
  - c. where section 63 of the Government of Wales Act 2006 applies, ensure that Welsh interests are properly represented on relevant advisory non-departmental public bodies (NDPBs)

21. For each such body, before the start of the relevant round of appointments DfE will agree the timetable and procedure for their involvement with WG, and will invite Welsh Ministers to be involved.
22. For appointments made by Welsh Ministers and/or by DfE ministers to bodies operating mainly or solely in Wales, attention must be paid to the relevant requirements of their respective departmental Welsh language schemes (if such a scheme has been approved in accordance with the Welsh Language Act 1993) or, in due course, any relevant standards made under the Welsh Language (Wales) Measure 2011 and imposed on Welsh Ministers and/or DfE ministers.

## **Finance**

23. DfE and WG will act in accordance with the Statement of Funding Policy. DfE will advise WG of policy developments that might impact on the local government settlement in Wales so that their budgeting assumptions are not undermined.
24. In addition, before reaching a decision on the transfer of existing executive functions via either an Order made under s58 of Government of Wales Act 2006 or an Act of the UK Parliament, the Welsh Government and the UK government will identify the administrative, programme and capital costs involved in the exercise of those functions in relation to Wales, taking full account of all relevant factors. Ministerial agreement to the transfer of executive functions will depend on agreement not only that the relevant costs, assets and liabilities have been identified but also on agreement about which funds, assets and liabilities will transfer with the functions themselves.

## **Access to services**

25. DfE and WG may by agreement, provide each other with administrative, professional or technical services. Arrangements may also be made for any function of one party to be exercised by the other party<sup>8</sup>. Each may charge the other for services provided; charges will not generally be made where such services have been provided free of charge in the past.

## Welsh Language Scheme

26. The Welsh Ministers have a statutory duty, under section 78 of the Government of Wales Act 2006, to adopt a Welsh language scheme. DfE is bound by ministerial undertakings given to the UK Parliament about the use of Welsh in public business. These undertakings require the preparation of Welsh Language Schemes, in line with the Welsh Language Act 1993, agreed by the Welsh Language Board. Such schemes, which contribute to Welsh Ministers and the UK government's shared policy aim of promoting and facilitating the use of Welsh, are to cover:
  - their services to the public in Wales, including the development of policies and legislation affecting Wales – as well as services provided directly to the public in Wales, either by DfE or through third parties
  - services provided by other public bodies to the public in Wales in relation to which they exercise statutory functions
  - communication with the public in Wales, including communication via publications, publicity campaigns, advertising and help-lines
27. DfE introduced a scheme, endorsed by the Welsh Language Board, which came into effect on 11 September 2006. The Welsh Ministers' revised scheme came into effect on 28 March 2011. The establishment of the Welsh Language Commissioner under the Welsh Language (Wales) Measure 2011, which replaced the Welsh Language Board on 1 April 2012, will, over time, lead to the introduction of a new standards framework to replace language schemes. The Language Scheme of a body remains in place until such time as those standards take effect.
28. DfE and the Welsh Government will co-operate and consult as necessary in relation to Welsh language issues.

## Correspondence

29. DfE and the Welsh Government will handle replies to correspondence in accordance with the Memorandum of Understanding and the principles set out in Devolution Guidance Note 27 ([Footnote 5](#)). If a letter or other enquiry is received where both DfE and the Welsh Government have an interest, they will agree on a case-by-case basis on how the reply should be handled.

30. Where there is a need to transfer correspondence between departments, it will be transferred within 5 working days and wherever possible, earlier. On the day that the correspondence is transferred a letter should be sent to the correspondent confirming the action that has been taken and naming the person who is responsible for handling the correspondence.

## **Other documents**

31. The arrangements set out in this concordat will be supplemented by those in the overarching Memorandum of Understanding and its supplementary agreements, which include the Agreement on the Joint Ministerial Committee, the concordats on Co-ordination of EU Policy Issues and on International Relations, in addition to the Qualifications Inter-administration Protocol between England, Northern Ireland and Wales.
32. The Cabinet Office has published a series of Devolution Guidance Notes; these include notes covering:
- common working arrangements between the UK government and devolved administrations (Devolution Guidance Note 1)
  - handling correspondence under devolution (Devolution Guidance Note 2)
  - the role of the Secretary of State for Wales (Devolution Guidance Note 4)
  - primary legislation affecting Wales (Devolution Guidance Note 9)
  - Ministerial accountability after devolution (Devolution Guidance Note 11)
  - modifying the legislative competence of the National Assembly for Wales (Devolution Guidance Note 17).

The arrangements set out in this concordat will be interpreted with reference to the guidance in these notes.

## **Disputes**

33. Avoidance and resolution of differences, disagreements and disputes will take place in accordance with the Protocol on the Avoidance and Resolution of Disputes set out in the Memorandum of Understanding. Both DfE and WG 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.

## **Review**

34. This concordat, and the functioning of bilateral relations generally, will be reviewed one year after coming into effect and at least every 3 years thereafter. Either party may request an additional review if they consider it necessary (for example, to propose the addition of further areas as new policies develop). Any changes made to the concordat will be with the agreement of both parties.

## **Confidentiality**

35. DfE and WG will follow the guidance in the Memorandum of Understanding on confidentiality.

## **Agreement**

36. The concordat was agreed between DfE and the Welsh Government on 7 January 2013.

# **Annex A: handling of school teachers' pay and conditions, Review Body reports and recommendations, and the Teachers' Pension Scheme (TPS)**

## **Introduction**

1. The statutory pay and conditions of school teachers in maintained schools are determined under the Education Act 2002. The Act confers powers on the Secretary of State. Under current statutory arrangements the exercise of

those powers is a matter solely for DfE, which exercises the function in relation to both England and Wales. The functions of the Secretary of State under the 2002 Act were not included in the National Assembly for Wales (Transfer of Functions) Order 1999 and have not since been transferred to the Welsh Ministers.

2. The School Teachers' Review Body (STRB) is required to examine and report on the statutory pay and conditions of school teachers in England and Wales. The Secretary of State for Education is empowered under the 2002 Act to give the STRB directions as to the matters to which it is to have regard in making its report. The STRB reports to the Prime Minister and the Secretary of State for Education. The Department thus has the sole responsibility for setting out the remit and directions to the STRB; for submitting the Government's evidence to the STRB; for publishing the report of the STRB to Parliament; and for co-ordinating policy in the response to STRB recommendations.
3. DfE also has sole responsibility for determining teachers' pension's arrangements and for managing the Teachers' Pension Scheme (TPS) in England and Wales. The Regulations governing the provisions of the TPS are made under powers conferred on the Secretary of State by the Superannuation Act 1972.
4. Given its responsibilities for education WG has a major interest in the continuing development of an effective STRB report system as it affects teachers' pay and conditions in Wales. This annex sets out the arrangements for consultation and exchange of information on the work of the STRB and on teachers' pay and conditions issues generally.

## **Accountability**

5. The Welsh Government is responsible for the provision of funding as part of the Local Government settlement in Wales (and will take into account, inter alia, the cost of the relevant STRB recommendations). DfE is responsible for the provision of funding as part of the Local Government settlement in England. STRB takes this funding into account in STRB recommendations to Parliament.

## Consultation

6. DfE will, consistently with the Memorandum of Understanding and concordat, consult with WG on STRB, teachers' pay and conditions and pensions matters which currently apply across England and Wales, and which are funded on departmental or Assembly Votes. This consultation will include proposals for policy changes, reviews and implementation arrangements. Specifically, DfE will at the earliest opportunity:
  - consult WG about the content of its remit letter to the STRB and take into account its views
  - consult WG about the STRB's recommendations and the proposed government response and take into account its views
  - consult WG about the affordability of STRB's recommendations in Wales, and take account of its view.
  - consult WG about the draft "School Teachers' Pay and Conditions Document and Guidance on School Teachers' Pay and Conditions" and accompanying statutory guidance before it is issued
  - alert WG to when the "School Teachers' Pay and Conditions Document and Guidance on School Teachers' Pay and Conditions" and accompanying statutory guidance will be available on the department's website
  - consult WG about proposed changes to the TPS.
7. WG will seek to respond to these approaches at the earliest opportunity. WG will consult DfE on key policy and programme developments within its area of responsibility.
8. DfE and WG acknowledge that there may be other occasions where DfE and WG ministers and officials will want to separately write to STRB.

## Exchange of Information

9. DfE will, as a minimum:
  - i. provide WG with advice and information on the handling of Assembly Questions, debates, and correspondence on teachers' pay and conditions and pensions
  - ii. liaise with WG on all major announcements concerning the STRB,

- teachers' pay and conditions and pensions
- iii. provide WG with copies of STRB reports and links to the "School Teachers' Pay and Conditions Document and Guidance on School Teachers' Pay and Conditions" and accompanying statutory guidance at the time they are published
  - iv. provide WG with statistics and other factual information on teachers' pay and conditions and pensions as required.
10. WG will, as a minimum:
- i. inform DfE about any plans it may have for the delivery and development of policies in its area of responsibility which have links with teachers' pay and conditions or pensions
  - ii. nominate a contact for teachers' pay and conditions and pensions issues
  - iii. provide statistics and other factual information as required to assist DfE in managing the TPS
  - iv. provide comments on and contribute as requested by DfE to the development of consultations or proposals to amend the TPS
  - v. contribute, including statistical data and other factual information, to the production of the Secretary of State's evidence to the STRB as requested by DfE.

## **Working parties**

11. DfE will invite WG to be represented on groups established to monitor, review or develop teachers' pay and conditions or pensions matters. WG will make all reasonable endeavours to be appropriately represented at meetings of such groups where it considers representation to be necessary.

## **Annex B: working level agreement on education statistics**

### **Introduction**

1. This agreement is between the Chief Statistician (as an official of the Welsh Government, "WG") and the Director of Analytical Services in the

Department for Education (“DfE”). Unless otherwise indicated, the term “officials” refers below to the statistical staff working in the two organisations.

2. This agreement identifies those aspects of statistical work in which officials of WG and DfE have joint interests, and outlines the arrangements for carrying out this work.
3. This statistical work will be carried out in line with the principles established in the Memorandum of Understanding between the UK Government and the devolved administrations, and the Concordat between DfE and WG (to which this Working Level Agreement forms an annex). In particular, both parties agree that statistical work will be carried out in line with the Code of Practice for Official Statistics, supporting National Statistics guidance and the legislative framework of the Statistics and Registration Services Act 2007.
4. Unless it is necessary to involve more senior staff, the arrangements listed below will be adjusted and supplemented as required to meet changing business needs by those staff with direct responsibility for the area of work concerned. Significant changes to arrangements will be agreed in writing.
5. Cross-departmental working will also be managed through the Theme group for Children, Education and Skills. This is chaired by the Head of Profession for Statistics in DfE and any issues raised through that group may be escalated to the Inter Administration Committee for statistics.
6. The current working arrangements are set out below.

## **Education statistics**

7. WG and DfE will co-operate on plans for statistical outputs. DfE will consult WG on plans for statistical outputs which include statistics for Wales on devolved issues and will ensure that adequate arrangements are made with WG for quality assurance and pre-release access to such outputs.

## **‘Education and Training Statistics for the United Kingdom’**

8. Officials of WG and DfE agree the set of statistical information to be published annually in ‘Education and Training Statistics for the United Kingdom’, and an annual schedule for data submission, checking drafts and publication. The agreed schedule for data submission takes into account any

other requirements for statistical information on particular topics to be available by a particular date.

9. Officials of WG provide colleagues in DfE with the Welsh data required for 'Education and Training Statistics for the United Kingdom' in line with the above agreement. DfE officials prepare and publish 'Education and Training Statistics in the UK'.
10. Earlier in 2011, DfE officials consulted users including WG about the format and contents and possible change in scope or discontinuation of the Education and Training Statistics for the United Kingdom Volume, while continuing to meet user needs. These arrangements will be reviewed if the decision is made to cease or amend the UK annual volume.

## **Other data**

11. Officials of WG and DfE will provide each other with data and statistical information on an ad hoc basis, to meet business needs. Provision of such data and statistical information by officials of DfE to WG officials will include, in particular:
  - participation and attainments in vocational qualifications (NB to reflect move from NVQs to QCF and potential different data sources/ requirements)
  - information on teachers, from the Database of Teacher Records
  - information on students due to qualify as teachers, for the purposes of Qualified Teacher Status
  - information on pupils living in Wales but educated at a school in England, from the School Census
12. Where the Office for National Statistics (ONS) requires aggregated UK statistics on Education, officials of DfE provide these to ONS (having checked them when necessary with WG officials). Where statistics are required to be disaggregated to England/Wales levels, officials of DfE and WG agree appropriate arrangements to provide these to ONS.
13. Officials of DfE and WG have separate bilateral agreements with other bodies that have UK or GB wide responsibilities for education statistics. As far as possible, these agreements are similar. Each takes account of the agreements reached by the other.

14. Except where otherwise agreed, officials of DfE co-ordinate the UK contribution to UNESCO, OECD, Council of Europe and EU / Eurostat of statistical information and advice based on data from all parts of the UK.

## Footnotes

[1] The functions relating to safeguarding and teacher discipline need to be retained in view of the changes set out in the Education Act 2011, which abolished the General Teaching Council for England and gave the Secretary of State (SoS) for Education new powers, from 1 April 2012, in relation to the regulation of teachers. The SoS functions will be carried out by a new executive body (known as the Teaching Agency) and the sharing of information is paramount to ensure a smooth transition and enable WG to consider the implications for Wales in relation to safeguarding.

[2] The Ministry of Justice has responsibility for Youth Justice, although DfE retain a policy interest.

[3] The Home Secretary is responsible for CONTEST. DfE's contribution to the Prevent strand of CONTEST is delivered largely through its regulatory framework and relates only to schools in England.

[4] In terms of legislation, Devolution Guidance Note 9 provides guidance on arrangements for managing Bills affecting the responsibilities of either the National Assembly for Wales or the Welsh Government. Also, Devolution Guidance Note 17 provides guidance on the procedure for modifying the legislative competence of the National Assembly (by way of Orders in Council under section 109 of the Government of Wales Act 2006 or by way of Parliamentary Act.

[5] DGN2 – general principles that apply to correspondence received by UK government departments, with particular reference to the handling of correspondence from members of the devolved legislatures.