



Llywodraeth Cymru  
Welsh Government

POLICY AND STRATEGY

# **Concordat between the Welsh Assembly Government and the Ministry of Defence**

This concordat sets out a framework for co-operation between the Ministry of Defence and the Welsh Assembly Government.

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# Contents

## Introduction

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## Context

---

## General principles

---

## Consultation arrangements

---

## Exchange of information

---

## Confidentiality and security

---

## Agency arrangements

---

## Resolution of disputes

---

## Review

---

## Introduction

1. This concordat sets out arrangements for consultation between the Welsh Assembly Government and the Ministry of Defence, including exchange of information, confidentiality and security, access to services, resolution of disputes, and review of relations. Among other things, it seeks to ensure that:
  - the Welsh Assembly Government takes into account the interests and responsibilities of the Ministry of Defence and the Armed Forces, when exercising its functions
  - the Ministry of Defence takes into consideration the interests, rights and

responsibilities of the Welsh Assembly Government when framing and implementing UK defence policy and activities likely to have an impact in Wales. While this concordat is non-statutory and not intended to be legally binding, the Ministry of Defence and the Welsh Assembly Government agree to abide by its provisions wherever practicable.

2. In some areas of activity, it is appropriate to establish more specific agreements to cover relations between the Ministry and the Assembly Government. Current examples include:
  - Delivering our Armed Forces' Healthcare Needs: A Concordat between the UK Departments of Health and the Ministry of Defence (March 2005)
  - A Service Level Agreement between Welsh Assembly Government and Ministry of Defence on the administration of a Home Relocation Service provided by Cartus (October 2006)
  - A Service Level Agreement between Welsh Assembly Government and Defence Vetting Agency governing responsibilities in processing the Developed Vetting security clearance and associated aftercare. While the present agreement dates from April 2008, a replacement is currently in draft, and
  - A Service Level Agreement between Welsh Assembly Government and Ministry of Defence regarding the Armed Forces Enhanced Learning Credit Scheme and associated claims for eligible service leavers accessing their first further or higher educational qualification (currently in draft). Such agreements – and any others which may be formulated - are unaffected by this concordat.
3. This concordat does not affect the Statement of Funding Policy, published by HM Treasury on 9 October 2007 (or any relevant successor Statement).

## **Context**

4. Under the current Welsh devolution settlement (The Government of Wales Act 2006), the Welsh Assembly Government has executive responsibility in Wales for many areas of government which, in England, fall to a Whitehall Department. Outside the devolved areas of government, the UK Government retains the executive responsibility, including defence. The Government of Wales Act 2006 also created a separation between the legislature and the

executive and provided the National Assembly for Wales with powers to legislate for Wales in relation to the devolved fields of government.

5. 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 ([Memorandum of understanding between the UK Government, Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee](#) on GOV.UK). The principles underlying the MoU are:
  - bilateral agreements, known as concordats, will set out the working practices between individual UK departments and the devolved administrations
  - most matters requiring communication with one or more of the other administrations will be handled routinely by officials or ministers
  - where a matter is not capable of being handled bilaterally, it will be referred to the Joint Ministerial Committee, as described in the MoU.

## General principles

6. All matters relating to the defence of the United Kingdom remain the direct responsibility of the UK Government. This is to provide for a strong integral defence policy and a seamless and effective defence capability for the UK as a whole.
7. In view of the special circumstances of defence, legislation has conferred a number of exemptions, privileges and powers on the Secretary of State for Defence, the Ministry of Defence or the Armed Forces. The Welsh Assembly Government recognises that there will be cases where Assembly Measures or subordinate legislation made by Welsh Ministers need to take account of these special circumstances. In addition, the Ministry of Defence enjoys exemptions, privileges and powers conferred on the Crown and freedom from legislation which does not bind the Crown.
8. The use of these exemptions varies. Some are invoked during the provision of the UK's defence capability; in other cases, the Ministry of Defence complies with the relevant legislation, invoking exemptions exceptionally. It is the policy of the Ministry of Defence to comply with the law where it is

reasonably practicable to do so.

## **Consultation arrangements**

9. The Welsh Assembly Government undertakes, as far as practicable, to inform the Ministry of Defence where it proposes to exercise functions which might impact on defence matters, in sufficient time for the policy and practical implications for defence to be examined and representations made as appropriate. This includes, but is not restricted to, the making of subordinate legislation and proposals for Legislative Competence Orders or Assembly Measures.
10. The Ministry of Defence undertakes, as far as practicable, to inform the Welsh Assembly Government where it proposes to exercise functions, or implement policy developments that may impact on matters within the Assembly Government's responsibility, in sufficient time for the policy and practical implications for Wales to be examined and representations made as appropriate.
11. In particular, the Ministry of Defence will consult the Welsh Assembly Government at an early stage when preparing primary legislation on matters within the legislative competence of the National Assembly for Wales or within the functions of the Welsh Ministers. Details of the processes to be followed in such cases are set out in Devolution Guidance Note 9.
12. In general, officials of the Ministry of Defence and the Assembly Government will take responsibility for complying with the provisions of this concordat in respect of their areas of responsibility. Lead officials in both administrations will maintain regular contact with their opposite numbers. Where there is not an obvious point of contact for a topic, the Assembly Government will initially approach the Ministry of Defence's External Relations Unit (ERU). The initial point of contact in the Assembly Government will be the Operations Team of the Department for Public Services and Local Government Delivery. The Operations Team and the ERU will also act as the contact point within the respective administration for queries about the operation of this concordat.
13. To aid co-operation and a smooth working relationship, representatives of the Ministry of Defence and individual Services are invited to biannual meetings of Heads of Government Offices in Wales, chaired by the

Assembly Government's Permanent Secretary. However, discussion on matters of mutual interest will take place as and when appropriate.

According to need, officials may:

- establish working groups, committees or other regular or ad hoc meetings
- ask to be represented on statutory bodies or particular interest groups
- invite representatives of the Ministry of Defence or the Assembly Government to attend each other's internal meetings, or
- create integrated project teams, underpinned by formal project documentation.

## **Exchange of information**

14. The MoU sets out the principles for sharing information. The Ministry of Defence and the Welsh Assembly Government undertake to comply with these principles to ensure that each is aware and takes account of the interests of the other. If any doubts arise whether such information should be provided, the matter will be referred in the first instance to the Operations Team of the Assembly Government's Department for Public Services and Local Government Delivery or the Ministry of Defence's External Relations Unit for consideration.
15. The exchange of information will be subject to the provisions about confidentiality and security set out both in the MoU and associated guidance, and at paragraphs 16 - 18 below, and the need to observe any limitations and constraints imposed by the laws applying in England, Wales, Scotland or Northern Ireland.

## **Confidentiality and security**

16. UK Ministers and the Welsh Ministers (by virtue of section 92 of, and paragraph 34 of Schedule 10 to, the Government of Wales Act 2006) are bound by the full terms of the Official Secrets Acts. Officials serving the Assembly Government and the Ministry of Defence are similarly bound and are also subject to the standards of conduct laid down in their respective

Civil Service Code. They will respect the confidentiality of all discussions and documents. Protectively marked material will be handled and protected at all times at least according to security standards and procedures approved by the UK Government and set out in the Security Policy Framework, and where necessary to any additional standards requested by the Ministry of Defence or the Welsh Assembly Government. Officials serving the Assembly Government needing access to Ministry of Defence protectively marked material will be required to have the appropriate UK Government security clearance.

17. Subject to access to information legislation, information belonging to international defence organisations will be handled and protected according to the regulations of those organisations (e.g. for NATO, C-M(2002)49, and for the Western European Union, WEU RS100). Similarly, information received under international defence treaties or other agreements between nations will be subject to any arrangements on security and confidentiality made under those agreements.
18. The Ministry of Defence and the Welsh Assembly Government will state when sharing information what, if any, restrictions there should be upon its use, and both parties will endeavour to treat information they receive in accordance with any such restrictions. In the event of one administration receiving an access to information request from a third party for information it has received from the other administration, it will seek the other administration's views and ultimately make a decision about disclosure in accordance with access to information laws and, in the case of the Assembly Government, its Code of Practice on Access to Information.

## **Agency arrangements**

19. In accordance with section 83 of the Government of Wales Act 2006, the Ministry of Defence and the Welsh Assembly Government may provide each other with administrative, professional or technical services to assist in discharging their respective responsibilities. Every effort will be made by both parties to provide such assistance. Charges for advice, assistance, goods or services may be raised by either the Ministry of Defence or the Assembly Government, their agencies, trading funds or other associated

bodies at the discretion of the bodies or agencies concerned and in accordance with normal practice. Where existing agreements specify customer-supplier relationships between Ministry of Defence trading funds or agencies and Welsh bodies, these will continue.

## **Resolution of disputes**

20. While resolution of disputes is one function of the Joint Ministerial Committee (JMC) established under the MoU, disagreements should normally be capable of resolution without the need for reference to the JMC.
21. The general approach to resolving any disputes will adopt the following successive stages:
  - Initially, the parties will attempt to settle the dispute on a bilateral basis, at either official or ministerial level
  - If this fails to resolve the matter, it will be referred to the Secretary of State for Wales
  - If the dispute persists after these steps have been taken, it should then be referred to the JMC Secretariat.
22. Where the disputed action can reasonably be delayed, neither party will proceed with it while a solution is being sought. If it is imperative that the action be taken or function exercised within a specified timescale, or where there are other reasonable grounds for taking the action before agreement has been reached, the other party will be informed of this as soon as possible together with the grounds on which this decision has been based. Due warning will be given before the action is then taken. The action should nevertheless be undertaken with as full regard as possible to the concerns which have been expressed.
23. Nothing in this concordat prevents either the Ministry of Defence or the Welsh Assembly Government from requesting the institution of devolution proceedings under Schedule 9 to the Government of Wales Act 2006. But in such an event, each party will endeavour to give the other prior notice of its intention.

## **Review**

24. Officials of the Welsh Assembly Government and Ministry of Defence will hold an annual liaison meeting to review this concordat. Any alterations to this concordat will not take effect unless agreed in writing by both parties. The liaison meetings will also review relations between the administrations, address any particular points at issue and take a forward look at their respective legislative and executive programmes.

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