

CIVIL CONTINGENCIES ACT 2004: CONCORDAT BETWEEN THE UK GOVERNMENT AND THE SCOTTISH MINISTERS

Purpose

1. This Concordat establishes an agreed framework for co-operation among the Scottish Ministers and the UK Government on the application, in Scotland, of the Civil Contingencies Act 2004 (“The Act”). It should be read in conjunction with the framework for inter-administration relations, set out in the overarching Memorandum of Understanding and related Devolution Guidance notes available from:

<http://www.scotland.gov.uk/Topics/Government/Devolution/18060/11556>.

2. This agreement is not legally binding but there is an expectation that each party will abide by it wherever practicable. The parties will co-operate to the fullest possible extent to achieve the aim of this agreement.

Background

3. The Act delivers a single framework for civil protection in the UK and is separated into two parts:

- Part 1: Local Arrangements for Civil Protection. This focuses on local arrangements for civil protection, establishing a statutory framework of roles and responsibilities for local responders. Scottish Ministers have a number of powers under Part 1 of the Act to allow them to place further duties on Scottish responders and regulate how they perform these duties. These powers have been exercised in the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 which may be viewed at:

http://www.opsi.gov.uk/legislation/scotland/ssi2005/ssi_20050494_en.pdf

- Part 2: Emergency Powers. This focuses on emergency powers, establishing a modern framework for the use of special legislative measures that might be necessary to deal with the effects of the most serious emergencies. Part 2 of the Act relates to reserved matters.

Review of Agreement

4. The agreement will be reviewed at appropriate intervals to see how far its aims have been achieved and in the light of experience. It will also be kept under review in light of any substantive amendments to the Civil Contingencies Act or Regulations and guidance issued by the UK Government or the Scottish Ministers, and in the light of any changes in the functions vested in the Scottish Ministers.

5. Amendments to this Concordat shall be agreed by all parties.

Part 1 of the Act – Local Arrangements for Civil Protection

6. Local civil protection arrangements are largely a devolved matter in Scotland, and the Scottish Ministers will make regulations under this Act and issue guidance to responders falling within devolved competence. A small number of responders exercising functions in Scotland but falling within reserved competence (e.g. Maritime and Coastguard Agency, British Transport Police and the Health and Safety Executive) will be subject to Regulations and guidance issued by UK Ministers.

7. Given their respective roles in managing the civil protection framework across the UK, it is also important to ensure that communication between the UK Government and the Scottish Ministers works well. To help achieve this, section 14 of the Act requires UK Ministers to consult Scottish Ministers when making provisions affecting responders exercising functions in Scotland. There is also a clear requirement on Scottish Ministers to consult UK Ministers when making regulations or orders under Part 1 of the Act. This consultation will take place at the earliest opportunity.

8. The UK Government and the Scottish Ministers will also consult each other at the earliest opportunity in relation to any statutory guidance issued under section 3, 4, 6, and 15 of the Act and any other guidance or initiatives which have direct implications for the performance of duties under the Act in Scotland. Similarly, both parties will work together to share experience about implementation issues (e.g. performance assessment).

9. All parties shall take account of comments and suggestions made by others on policy and draft instruments which have cross-border implications, although it is recognised that at times there may be over-riding considerations which mean that inputs cannot be accommodated. This consultation shall be early and proactive wherever possible and, if appropriate, both parties will invite the other party to be represented at key forums and meetings.

Part 2 of the Act – Emergency Powers

10. Part 2 of the Act is reserved and extends to Scotland. The powers contained in Part 2 may be applied to the UK as a whole or to one or more Parts or regions of the UK. The powers shall be applied to the minimum area necessary to respond to, or mitigate the effects of, the emergency.

Invoking emergency powers under Part 2 of the Act

11. The Scottish Ministers can request that emergency regulations should be made in Scotland. Such a request would normally be made through the relevant UK Lead Department – or Cabinet Office if it is a cross-departmental issue – and in conjunction with the Scotland Office as appropriate. The UK Government will consider such a request, and communicate its response to the Scottish Ministers as rapidly as possible.

12. Section 29(1) of the Act provides that emergency regulations which relate wholly or partly to Scotland may not be made unless a senior Minister of the Crown has consulted the Scottish Ministers (although this requirement to consult may be disapplied by reason of urgency).

13. While emergency regulations under the Act would be made by Her Majesty (or *in extremis* an appropriate senior Minister of the Crown), the resources and expertise to implement the regulations in Scotland would in most cases lie with the Scottish Ministers. Any emergency regulations made should reflect normal legislative and administrative responsibilities within Scotland and be compatible with the Scotland Act 1998.

14. Regulations may confer functions on the Scottish Ministers, including a power, or duty, to exercise discretion and a power to give directions or orders, whether written or oral. The Act provides for regulations made under Part 2 to permit further subordinate legislation to be made, and the regulations may confer the authority to the Scottish Ministers to make such legislation.

15. The Scottish Administration will work with the UK Government to ensure, at the earliest opportunity, appropriate legislation, is brought to the Scottish Parliament to replace the use of emergency regulations.

Preparations

16. The Cabinet Office will work with the Scottish Ministers in developing and keeping up to date preparations for the possible use of emergency powers that are aligned with devolved competence and are tailored to the needs of Scotland. These preparations will reflect and respect normal functions and responsibilities of the Scottish Ministers.

Emergency Co-ordinator

17. Section 24 of the Act requires the appointment of an Emergency Co-ordinator in any Part or region of the UK to which emergency regulations apply. For Scotland, the appointment will be made by a senior Minister of the Crown.

18. The terms of appointment, conditions of service and functions of the Emergency Co-ordinator will be set out in the letter of appointment, though additional aspects of the role may be included in the emergency regulations themselves where appropriate. The Emergency Co-ordinator must comply with any direction or guidance issued by the senior Minister. In preparing draft regulations, directions and guidance for the Scottish Emergency Co-ordinator, the UK Government will consult Scottish Ministers.

19. The default emergency co-ordinator in Scotland will be the Head of Justice Department in the Scottish Executive. However, this could vary depending on the nature and severity of an emergency and the expertise required. There will be flexibility for other senior figures to be nominated, or for the nominated co-ordinator to delegate some or all of their functions where the situation makes this appropriate. In addition to the functions conferred by the emergency regulations, the Emergency Co-ordinator shall also normally be expected to have a key role in the Scottish crisis management arrangements which will include briefing Scottish Ministers, members of the Scottish Parliament and members of the UK Parliament. But formal accountability for the exercise of the functions of Emergency Co-ordinator remains to the UK Government.

20. Where it is possible, the UK Government shall consult with the Scottish Ministers before an Emergency Co-ordinator is appointed, particularly if it is proposed to vary any previously agreed arrangements.

Dispute resolution

21. Where any problems arise with the application or implementation of any of the aspects of the Act to Scotland, the Scottish Ministers and the UK Government shall co-operate to resolve these. The UK Government is committed to a post-emergency review of any use of emergency powers by a senior independent Privy Councillor. He or she will take evidence from relevant parties before issuing a report that will be presented to Parliament no more than one year after the cessation of use of the powers. If the regulations extended to Scotland he or she would take evidence from the Scottish Ministers as part of this process. This will allow the practical application of the Concordat to be considered with a view to ensuring that any areas of difficulty are resolved, and the Concordat

amended if necessary, to ensure its effective operation in the event emergency regulations are made that apply to Scotland in the future.

Signed

Position/Date

Scottish Ministers

Cathy Jamieson MSP
Minister for Justice

UK Government

Jim Murphy MP
Parliamentary Secretary, Cabinet
Office