

HOUSE OF COMMONS SCOTTISH AFFAIRS COMMITTEE

INTERGOVERNMENTAL RELATIONS: THE CIVIL SERVICE

Introduction

1. Civil servants working for the Scottish Government work within the general legislative framework for the Home civil service with particular arrangements to reflect, in the words of the Scottish Civil Service Code¹, that they are “accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament”².
2. Civil servants supporting the Scottish Government, like those in the Home civil service supporting the United Kingdom Government and the Welsh Government, serve Scottish Ministers with integrity, honesty, objectivity, and impartiality, in a way which retains the confidence of Ministers, while at the same time ensuring that they will be able to establish the same relationship with future governments³.
3. It is the responsibility of civil servants working for the Scottish Government to observe the Civil Service Code, and there are procedures for complaints to be considered by the Civil Service Commission⁴. In addition the Permanent Secretary has specific legal responsibilities for financial matters, and Ministers and civil servants have responsibilities to ensure the government’s activities are lawful, under the Ministerial Code⁵ and the Civil Service Code⁶.
4. Civil servants in the Scottish Government support Scottish Ministers’ work with the UK Government and other devolved administrations under the terms of the Memorandum of Understanding on intergovernmental working, and within the structures set up by the Intergovernmental relations review.
5. The civil service therefore supports the Scottish Government of the day, which has the confidence of the Scottish Parliament, in developing and implementing their policies, and in working with the UK and other governments.

Legislative framework and the Scottish Civil Service Code

6. The legislative framework underpinning the position of the Scottish Government civil service is set out principally in the Scotland Act 1998⁷ (SA) and the Constitutional Reform and Governance Act 2010⁸ (CRAG).
7. Under the SA, while legislative competence over the civil service is reserved⁹ Scottish Ministers have functions in relation to the civil service. In particular, Scottish

¹ [Civil Service Code - gov.scot \(www.gov.scot\)](http://www.gov.scot)

² See paragraph 2, [Civil Service Code - gov.scot \(www.gov.scot\)](http://www.gov.scot)

³ See paragraphs 6 – 15, [Civil Service Code - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁴ See section 9, [Constitutional Reform and Governance Act 2010](http://www.gov.scot)

⁵ Paragraph 1.3, [1. Scottish Ministers - Scottish Ministerial Code: 2023 Edition - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁶ Paragraph 6, [Civil Service Code - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁷ [Scotland Act 1998 \(legislation.gov.uk\)](http://legislation.gov.uk)

⁸ [Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](http://legislation.gov.uk)

⁹ See paragraph 8 of Schedule 5, [Scotland Act 1998 \(legislation.gov.uk\)](http://legislation.gov.uk)

Ministers may “appoint persons to be members of the staff of the Scottish Administration”¹⁰, and such people are members of the civil service. In addition, under the SA and related legislation¹¹, management functions of the Minister for the Civil Service (a post always held by the Prime Minister) have been delegated to Scottish Ministers¹².

8. CRAG sets out the arrangements for the management of the civil service, the statutory underpinning of the civil service codes and the functions of the Civil Service Commission. As noted above, management functions for the civil service (excepting the Senior Civil Service) under CRAG has been delegated to Scottish Ministers.

9. CRAG also sets out that there may be civil service codes for the devolved administrations as well the UK Government. These codes should contain provisions that, as a minimum, require civil servants in the Scottish Government to “carry out their duties for the assistance of the administration as it is duly constituted for the time being, whatever its political complexion”¹³.

10. The Code must also “require civil servants to carry out their duties—

- (a) with integrity and honesty, and
- (b) with objectivity and impartiality.”

The Scottish Civil Service Code must be laid before the Scottish Parliament by the First Minister. If the Minister for the Civil Service proposes to change the Scottish Civil Service Code, they must consult with the First Minister¹⁴.

11. The current Scottish Civil Service Code dates from November 2010¹⁵. It sets out that

As a civil servant, you are accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament.¹⁶

It also provides more detail on the values of the civil service and their applicability. In particular, that the civil service must act in a way that is professional and lawful, and which retains the confidence of current Scottish Ministers as well as the confidence of future governments of different political persuasions, consistent with the commitment to impartiality¹⁷. Civil service resources cannot be used to support party political objectives.

12. The Scottish Civil Service Code sets out the steps that officials should take if they have concerns about potential conflicts with the code, both internally through

¹⁰ See section 51, SA

¹¹ [Civil Service \(Management Functions\) Act 1992 \(legislation.gov.uk\)](http://legislation.gov.uk)

¹² See paragraphs 2 and 3, [Civil Service management code - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

¹³ See [section 7, CRAG](#)

¹⁴ See [section 5, CRAG](#)

¹⁵ [Civil Service Code - gov.scot \(www.gov.scot\)](http://www.gov.scot); note the relevant provision of CRAG entered into force on 11 November 2010.

¹⁶ Paragraph 2.

¹⁷ Paragraph 14.

their line management and externally through the Civil Service Commission, whose functions in investigating complaints are set out in CRAG¹⁸.

13. The Civil Service Code makes clear that it is for civil servants to ensure they adhere to its values:

[This Code] sets out the high standards of behaviour expected of you which follow from your position in public and national life as a civil servant. You can take pride in living up to these values.¹⁹

14. Under the Scottish Ministerial Code, Ministers also have responsibilities towards the civil service, must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code²⁰. Ministers also have a responsibility to ensure their actions are lawful and to seek appropriate advice²¹. The Lord Advocate and the Solicitor General for Scotland ensure the Government acts lawfully, and have ultimate responsibility for advising the Scottish Ministers on the full range of the Government's responsibilities, policies and legislation, including the legal implications of Government proposals.

15. In addition to these general provisions, under the Public Finance and Accountability (Scotland) Act 2000²² the Permanent Secretary, as Principal Accountable Officer for the Scottish Administration, is required to ensure the economic, efficient, and effective use of public resources. He is answerable for this function to the Scottish Parliament, and regularly provides written and oral evidence to relevant Committees of the Parliament. He is accountable to the Scottish Parliament's Public Audit Committee as part of their consideration of the Scottish Government's Annual Consolidated Accounts, which are subject to independent audit by the Auditor General for Scotland, and which covers all Scottish Government spend.

Intergovernmental working

16. Following the creation of the devolved legislatures in 1999, the UK and devolved governments agreed a Memorandum of Understanding on Devolution and supplementary concordats (the MOU) that, amongst other things, established arrangements for liaison and dispute resolution²³. The MOU emphasises the need for good communication, consultation, and cooperation between the UK Government and devolved governments.

17. New intergovernmental arrangements²⁴ were agreed in 2022 which updated structures and ways of working, but contain similar principles of collaborative

¹⁸ [Section 9, CRAG](#); see also the Commission website: [Code Complaints - Civil Service Commission \(independent.gov.uk\)](#)

¹⁹ Paragraph 20

²⁰ See Chapter 6: [Scottish Ministerial Code: 2023 Edition - gov.scot \(www.gov.scot\)](#)

²¹ See paragraph 1.3 and 2.30-2.37: [Scottish Ministerial Code: 2023 Edition - gov.scot \(www.gov.scot\)](#)

²² [Public Finance and Accountability \(Scotland\) Act 2000 \(legislation.gov.uk\)](#)

²³ Latest version (October 2013): [MoU between the UK and the Devolved Administrations.pdf \(publishing.service.gov.uk\)](#)

²⁴ [Review of intergovernmental relations - GOV.UK \(www.gov.uk\)](#)

working, including maintaining positive and constructive relations, based on mutual respect for the responsibilities of each government and their shared role in the governance of the UK. Neither these new structures nor the structures that preceded it were intended to be the only conduit for intergovernmental working. On the contrary, the high-level formal structures have always been the complement to extensive bilateral and multilateral engagement and cooperation, formal and informal, between the governments, both on areas that are devolved and where devolved and reserved policies interact. Ministers and civil servants across the UK are in touch on a daily basis across all areas of interest, discussing joint decision-making, policy development and pragmatic ways of working together.

18. Some recent examples of practical and constructive engagement and joint working between the Scottish, UK Government and other devolved governments include: on Covid; supporting displaced Ukrainians; work on the implementation of newly-devolved powers, such as for social security in partnership with DWP; Green Freeports²⁵ and Investment Zones²⁶. Another example is Regional Growth Deals²⁷, which are funded by the Scottish and UK Governments and Local Authorities. The Scottish Government works closely with both the UK Government and local authority officials, and senior officials from both governments monitor progress across the programme through the Scottish City Regional Deals Delivery Board²⁸, seeking to work as ‘one team’ to ensure the deals deliver well for their areas.

19. On financial matters, there was agreement between the Scottish and UK Governments on updating the Fiscal Framework, which increased borrowing and reserve flexibility (as noted in the Scottish Government’s evidence to the Scottish Affairs Committee on 25 years of devolution²⁹). In her letter to the Finance and Public Administration Committee, the Deputy First Minister wrote: “The updated agreement (Fiscal Framework 2023) recognises changed circumstances since 2016 and contains greater budget flexibility and borrowing powers for Scotland. These outcomes are the result of collaborative working between the Scottish and UK Governments and a willingness to compromise on both sides.”³⁰ There has also been agreement on personal allowance spillover, which resulted in an additional £375 million of funding for the 2022-23 Scottish Budget³¹.

20. On international matters, there are civil servants supporting Scottish Ministers operating from the Scottish Government’s international offices, including those based within British Missions abroad. Officials from both the UK and Scottish Governments work together to ensure that Scottish Ministers can conduct their international activities, whilst keeping UK Government officials informed on how programmes are developing. UK Government officials also inform and involve Scottish Government officials on international agreements and structures which touch on devolved policy matters³².

²⁵ [Green freeports - Cities and regions - gov.scot \(www.gov.scot\)](https://www.gov.scot/cities-and-regions/green-freeports/)

²⁶ [Two Scottish Investment Zones announced - gov.scot \(www.gov.scot\)](https://www.gov.scot/investment-zones/)

²⁷ [Regional Growth Deals - Cities and regions - gov.scot \(www.gov.scot\)](https://www.gov.scot/regional-growth-deals/)

²⁸ [Scottish City Region and Growth Deal Delivery Board - gov.scot \(www.gov.scot\)](https://www.gov.scot/city-regional-deals-delivery-board/)

²⁹ committees.parliament.uk/writtenevidence/124908/pdf/

³⁰ [Fiscal Framework Review Letter of 2 August 2023 | Scottish Parliament Website](https://www.scottish.parliament.uk/committees/finance-and-public-administration/letters/2023/08/02/fiscal-framework-review-letter-of-2-august-2023/)

³¹ [Update on income assumed at the 2022 23 Scottish Budget | Scottish Parliament Website](https://www.scottish.parliament.uk/committees/finance-and-public-administration/updates/2022/23-scottish-budget/)

³² See Annex D of the MOU: [MoU between the UK and the Devolved Administrations.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/mou-between-the-uk-and-the-devolved-administrations.pdf)

21. These intergovernmental relations arrangements therefore provide the framework for considering matters that involve policy discussion, interactions between reserved and devolved policy, as well as any areas of political or policy difference between governments.

Reserved and devolved matters

22. It is essential for civil servants working for the Scottish Government to have an understanding of both reserved and devolved issues, as these can directly or indirectly affect devolved responsibilities (including joint working by the Scottish and UK Governments), or be the subject of proposals for reform of the devolution settlement itself (including constitutional change). For example, the UK Government's legislative programme has to be examined to see if legislative consent is required for provisions in any of the proposed bills (on which the governments might not agree).

23. The Scottish Government has also developed policy on reserved matters, and done so since the start of devolution. The Scotland Act 1998 contains various mechanisms for the boundaries between reserved and devolved matters to change. The civil service supported Scottish Ministers in seeking and negotiating adjustments to competence under the first two devolved Scottish administrations, for example on competence over railways³³.

24. A range of activity making the case for constitutional reform was undertaken by the Scottish Government in the period 2007 to 2014, and civil servants supported Scottish Ministers in negotiations on the Scotland Acts 2012 and 2016, and their associated fiscal arrangements. Most recently, civil servants have supported Scottish Ministers in developing the *Building a New Scotland* papers.

Civil service management structures, talent schemes and interchange

25. There are multiple regular and routine mechanisms for engagement on the management and development of the civil service across jurisdictions. These include the involvement of the Permanent Secretary of the Scottish Government in meetings of the Permanent Secretary group and the Civil Service Board³⁴ and engagement with talent, leadership and learning structures. The Director General Corporate³⁵ is a member of the Chief Operating Officers network and there is a Devolved Administrations Sub-Committee of the UK Civil Service People Board run by Cabinet Office which involves representation from Scotland, Wales and Northern Ireland.

26. Professional groups are active across the civil service with Heads of Profession (including digital, finance, commercial as well as the larger groupings of Operational Delivery and the Policy profession) connecting regularly across departments and nations.

³³ [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2002 \(legislation.gov.uk\)](#)

³⁴ [Civil Service Board - GOV.UK \(www.gov.uk\)](#)

³⁵ [Director-General Corporate - gov.scot \(www.gov.scot\)](#)

27. The Scottish Government is active in the UK Fast Stream and UK Civil Service talent development programmes. There are 24 Fast Streamers currently on rotation in the Scottish Government and 45 Scottish Government civil servants involved in cross civil service talent programmes at present. Civil servants continue to move between roles in UK departments and the Scottish Government. Over the past five years, on average around 240 civil servants per year have moved between core Scottish Government and UK government departments through loans and transfers in both directions.

Conclusion

28. In summary, there is a comprehensive system of legislation, statutory codes and other guidance for the civil service working for the Scottish Government, setting out clear lines of accountability to Scottish Ministers, the values of the civil service and their practical application, recourse for officials with concerns, and guarantees of lawfulness and propriety for Scottish Government actions and expenditure. Intergovernmental agreements, such as the MOU, and structures provide the framework for civil servants to support Scottish Ministers in their engagement with the UK and other governments, along with other channels of engagement and cooperation, formal and informal, between the governments, resulting in areas of collaboration and joint working. As set out above, Scottish Government civil servants are also involved in UK civil service management, structures and talent development programmes, and interchanges between the Scottish Government and UK Government departments continues.

Scottish Government

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