



UK legal systems

A quick introduction to the different legal systems (or jurisdictions) in the UK - to help you understand the key differences between the legal systems, the impact of devolution, and how this can affect how we apply the law in England and Wales, Scotland, or Northern Ireland.

If you decide this is directly relevant to your case and might affect the outcome, please do [ask for specific legal advice](#).

If you have an issue specific to Scots law or Northern Irish law, or to devolved matters in any of the nations, you might also need to talk to colleagues in those nations to check on any local legal issues:

- [Northern Irish Affairs team](#)
- [Scottish Affairs team](#)
- [Welsh Affairs team](#)

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Introduction

What are the different legal systems in the UK?

The United Kingdom historically has three separate legal systems, (or jurisdictions), one each for England and Wales, Scotland, and Northern Ireland.

There are some laws which apply throughout the whole of the UK, but you can't assume that this is always the case. In some areas Scots law and Northern Irish law is different, whilst courts and legal processes also work differently across the UK.

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What is devolution?

Devolution is a relatively recent political development which gives the constituent nations of the UK more power to make their own laws in certain areas, such as education and healthcare. This is separate and in addition to the existing historical differences between the UK's legal systems.

Since 1998, the Scottish Parliament, the Northern Ireland Assembly and the Welsh Parliament (Senedd Cymru) have each had the power to pass laws in certain areas. The UK Parliament continues to legislate for everything else, such as defence and international relations.

Devolution also created separate governments in the devolved administrations: the Scottish Government, the Welsh Government and the Northern Irish Executive.

Devolution does not follow a one-size-fits-all model: there's a different range of powers and policy matters devolved to each of Scotland, Wales and Northern Ireland. For example, policing is devolved in Scotland, but not in Wales, whilst the Scottish Government also has greater powers to set its own tax thresholds than its Welsh and Northern Irish equivalents.

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England and Wales

What is the law in England and Wales?

English and Welsh law, often referred to as just English law, is the civil and criminal legal system which is administered by the courts in England and Wales. English and Welsh law has never been comprehensively codified (collected and restated in a written document). Rather it has been developed through the passage of legislation, judicial decisions and case-by-case reasoning.

The main sources of modern English and Welsh law are:

- legislation (both primary and secondary);
- case law (common law); and
- constitutional conventions (unwritten understandings about how Parliament and members of the Government should act, which, although not legally enforceable, are widely observed).

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What is legislation and how is it made?

Legislation (or statute) is the primary source of English and Welsh law:

- Primary legislation is made in the form of Acts of the UK Parliament. The UK Parliament is made up of the Crown, the elected House of Commons and the largely appointed House of Lords.
- Proposed new laws are introduced in Parliament as bills, which are scrutinised, debated and voted on by MPs and peers. Bills must be approved by both Houses of Parliament in order to be passed to the monarch to be signed into law in a process known as Royal Assent.
- Secondary legislation (sometimes called delegated legislation), can be made by Government ministers under powers granted to them in primary legislation. It takes the form of orders and statutory instruments. This still has the force of law, but can't override any primary legislation, or go beyond the scope of the original powers set out in the primary legislation.
- The Welsh Parliament can also pass legislation that applies only to Wales on certain devolved matters (eg education and housing).

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What is common law and how is it made?

Common law, or judge-made law, is a source of law in the English and

Welsh legal system in which courts develop legal principles over time through the doctrine of 'judicial precedent'. This just means that lower courts are bound by the decisions and legal principles set out in the judgments of the higher courts.

Common law acts as a residual body of law, covering areas in which Parliament has not expressly legislated. It also includes judicial decisions about the interpretation and application of legislation.

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What happens when legislation and the common law conflict?

Under the principle of parliamentary sovereignty, Parliament is supreme. This means that legislation is the primary source of law and overrides the common law if the two conflict.

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Is there Welsh law?

Wales is not a separate legal jurisdiction. The courts in Wales apply the law of England and Wales and there is no separate Welsh criminal law. Wales also does not have a separate judicial system.

In some areas the devolved Welsh Parliament can now pass laws which only apply to Wales, often referred to as 'Welsh law', but this is not a separate body of law and still forms part of the law of England and Wales.

The [Commission on Justice in Wales Report \(2019\)](#) recommended that Wales should be empowered to establish a separate judiciary up to the level of the Court of Appeal. However, there are currently no plans to implement these recommendations.

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What matters are devolved to the Welsh Parliament?

There is no set list of matters that have been devolved to the Welsh Parliament. Instead the Welsh Parliament can legislate on any area which is not reserved to the UK Parliament. Schedule 7A of the Government of Wales Act 2006 sets out the following matters which are reserved to the UK Parliament:

- most aspects of the constitution;
- the Civil Service;
- the registration and funding of political parties;
- the judicial system and legal aid;
- private international law;
- international relations;
- defence and the armed forces;
- fiscal, economic and monetary policy;
- currency;
- financial services and markets;
- elections;
- nationality and immigration;
- national security;
- data protection and freedom of information;
- crime, public order and policing;
- betting and gaming;
- hunting;
- charities and fundraising;
- intellectual property;
- insolvency;
- competition matters;
- import and export controls;
- consumer protection and product standards;
- telecommunications and the postal service;
- industrial development;
- water and sewerage;
- energy;
- transport;
- social security;
- employment and industrial relations;
- abortion;
- health and safety;
- media;
- planning;
- equal opportunities; and

- family relationships and children.

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Scotland

What is Scots law?

When England and Scotland were united in 1707, Scottish private law and the Scottish courts were retained as a distinct legal jurisdiction. This means that, in certain areas, Scots law has remained different from the law in England and Wales.

Areas in which Scots law differs from the other UK legal systems include property law, criminal law, the law of trusts, inheritance law, family law, the age of legal capacity and the law on evidence in judicial proceedings. Scots law is primarily derived from legislation and common law, although historically it has also been created through custom and academic writings.

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Is there Scottish legislation?

Yes. Both the UK Parliament and the Scottish Parliament can make legislation for Scotland:

- The Scottish Parliament makes laws on issues which are devolved to Scotland, including economic development, health housing, justice and education. Scottish ministers can also be granted the power to create secondary legislation. This Scottish legislation only applies in Scotland.
- The UK Parliament also passes legislation that applies in Scotland. It makes laws on 'reserved' matters, or matters that apply across the UK (eg benefits, data protection, employment, defence and security). Sometimes the UK Parliament also passes

laws which cover devolved matters. However, under the Sewel convention, it usually only does this with the consent of the Scottish Parliament.

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What matters are devolved to the Scottish Parliament?

The Scottish Parliament has the power to make laws on the following range of issues, known as devolved matters:

- agriculture, forestry and fisheries;
- some aspects of benefits;
- consumer advocacy and advice;
- economic development;
- education and training;
- elections to the Scottish Parliament and local government elections in Scotland;
- some aspects of energy;
- the environment;
- some aspects of equality legislation;
- fire services;
- freedom of information;
- health and social services;
- housing;
- justice and policing;
- local government;
- planning;
- sport and the arts;
- some aspects of taxation;
- tourism; and
- some aspects of transport.

Other issues which have a UK-wide or international impact remain within the sole responsibility of the UK parliament. These are known as reserved matters and include:

- betting and gaming;
- broadcasting;
- consumer protection policy;
- currency;
- defence and national security;
- elections to the UK Parliament;
- employment law and industrial relations;
- financial affairs;
- immigration, asylum and visas;
- nationality and citizenship;
- postal services;
- telecommunications; and
- trade and industry.

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Is there Scottish common law?

Yes. Common law is an important source of law in the Scottish legal system. It's derived from the decisions of the Scottish courts and some decisions of the UK Supreme Court, which acts as Scotland's highest court of appeal in civil matters.

As the UK Supreme Court does not have jurisdiction over Scottish criminal cases, all common law concerning criminal matters in Scotland is developed solely by the Scottish courts.

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Northern Ireland

What is Northern Irish law?

Prior to 1921, Ireland (including what is now Northern Ireland and the Republic of Ireland) was part of the UK, albeit that it had its own legal system. However, since the partition of Ireland, Northern Ireland has operated as a separate legal jurisdiction.

Northern Irish law is derived from legislation and common law.

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Is there Northern Irish legislation?

Yes. Both the UK Parliament and the Northern Irish Assembly can make legislation which applies in Northern Ireland:

- The Northern Irish Assembly can make laws on certain devolved matters. Northern Ireland ministers can also be granted the power to create secondary legislation. This legislation only applies in Northern Ireland.
- The UK Parliament also passes legislation which applies in Northern Ireland, as it makes laws on key matters that apply across the UK.
- Orders in Council, issued by the UK Government between 1972 and 1998, also continue to apply in Northern Ireland.

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What matters are devolved to the Northern Irish Assembly?

There is no set list of matters which have been devolved to the Northern Irish Assembly, but as a guide, the Assembly can make laws on the following 'transferred matters':

- health and social services;
- education;
- employment and skills;
- agriculture;
- social security;
- pensions and child support;
- housing;

- economic development;
- local government;
- environmental issues (including planning);
- transport;
- culture and sport;
- the Northern Irish Civil Service;
- equal opportunities; and
- justice and policing.

The Northern Irish Assembly can also make laws on various 'reserved matters' which usually sit within the competence of the UK Parliament, but only with the consent of the Secretary of State for Northern Ireland (a UK Government minister). Reserved matters include:

- firearms and explosives;
- financial services and pensions regulation;
- broadcasting;
- import and export controls;
- navigation and civil aviation;
- international trade and financial markets;
- telecommunications and postage;
- the foreshore and seabed;
- disqualification of membership of the Northern Irish Assembly;
- consumer protection; and
- intellectual property.

The Northern Irish Assembly cannot make laws on matters of national importance across the UK, known as 'excepted matters,' including:

- the constitution;
- Royal succession;
- international relations;
- defence and the armed forces;
- nationality, immigration and asylum;
- elections;
- national security;
- nuclear energy;
- UK-wide taxation;
- currency;
- conferring honours; and

- international treaties.

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Is there Northern Irish common law?

Yes. Northern Irish common law was imported from English law when Ireland was ruled by Great Britain and has been further developed by the courts in Northern Ireland through the doctrine of judicial precedent.

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Our role

Is data protection law the same across the UK?

Yes. The UK GDPR and the Data Protection Act 2018 both apply throughout the UK.

However, the way data protection law applies in Scotland and Northern Ireland may differ slightly where it interacts with other areas of Scots law and Northern Irish law (eg in policing and a child's capacity to consent). For more details as to how the application of data protection law differs across the UK, please see the [detailed concept paper](#).

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Is freedom of information law the same across the UK?

No. The Freedom of Information Act 2000 (FOIA) applies in England, Wales and Northern Ireland, but in Scotland, it only applies to the Scottish-based branches of UK-wide public authorities. The same is true for the Environmental Information Regulations 2004 (EIR).

In Scotland, the Freedom of Information (Scotland) Act 2002 (FOISA) governs access to information held by Scottish public authorities. FOISA created the Scottish Information Commissioner, whose duties are similar to those of the Information Commissioner, but are limited to Scottish public authorities. The Scottish Information Commissioner also oversees the Environmental Information (Scotland) Regulations 2004.

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Can ICO lawyers advise on law across the UK?

No. Lawyers qualify to practice in only one of the UK's legal jurisdictions. This means that a lawyer qualified in England and Wales cannot, without taking further steps, advise on Scots law or Northern Irish law and vice versa.

The majority of the solicitors in the ICO Legal Service are only qualified to advise on English and Welsh law. This means that, in matters concerning Scots law or Northern Irish law, the ICO may need to instruct external lawyers who are qualified to practice in those jurisdictions.

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If you haven't yet read the summary paper above, we strongly recommend you start with that first!

But if you've already done so, you can then read our [detailed legal background paper on the UK legal systems](#) for full details.

You can find this - and all our other legal background papers - in the [Legal Services Library](#).

You can also find these related pages in our knowledge builder:

- [What's the territorial scope of the UK GDPR?](#)
- [What's the territorial scope of the DPA 2018?](#)
- [Does UK data protection law apply in the Isle of Man or Channel Islands?](#)

- [What are the British Overseas Territories and how does DP law apply?](#)
- [What are the EIR?](#)

And these pages cover some specific regional differences:

- [Who can people contact about missing medical records?](#)
- [Is there a right of access to a deceased person's medical record under data protection legislation?](#)
- [Can organisations use the serious harm exemption for social work data?](#)
- [What does the UK GDPR say about children's consent?](#)
- [Can subject access requests be made on behalf of children?](#)
- [Can parents access education records from non-maintained schools?](#)
- [What is the role of the Biometrics and Surveillance Camera Commissioner?](#)
- [Does the UK GDPR cover information about sole traders or other businesses?](#)
- [What's a corporate subscriber?](#)
- [What's RIPA?](#)

You can also find more information about legal systems, Scottish FOI law and devolution on these websites:

- [The justice system and the constitution | Courts and Tribunals Judiciary](#)
- [It's public knowledge | Scottish Information Commissioner](#)
- [Devolution Factsheet | gov.uk](#)
- [Devolution of powers to Scotland, Wales and Northern Ireland | gov.uk](#)
- [Devolved Parliaments and Assemblies | UK Parliament](#)
- [What are the Powers of the Scottish Parliament? | Scottish Parliament](#)
- [Who decides for Wales | Welsh Parliament](#)
- [What are the powers of the Northern Ireland Assembly | Northern Ireland Assembly](#)

Search terms: English law, Welsh law, Scots law, Northern Irish law, common law, constitution, legislation, statute, primary, secondary, orders, statutory instruments, bills, Sewell convention, devolution, devolved matters, reserved matters, transferred matters, excepted matters, parliament, government, nations, regions, United Kingdom, Westminster, Holyrood, Stormont, Senedd

LEGAL CONCEPT PAPER

Subject:	UK Legal Systems
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Issue it relates to:	This legal concept paper considers the different legal systems and jurisdictions within the UK, how they differ, the impact of devolution and the application of data protection and freedom of information law throughout the UK.
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Purpose:	To assist ICO colleagues in understanding how the legal system differs in England and Wales, Scotland and Northern Ireland and how this can affect the application of data protection and freedom of information law in different parts of the UK.
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UK Legal Systems

This legal concept paper considers the different legal systems and jurisdictions within the UK, how they differ, the impact of devolution and the differences in the application of data protection and freedom of information law throughout the UK.

This paper will cover the following:

- 1) [The different legal systems within the UK,](#)
- 2) [English and Welsh law,](#)
- 3) [Scots law,](#)
- 4) [Northern Irish law,](#) and
- 5) [Data protection and freedom of information law across the UK.](#)

1. The Different Legal Systems in the UK

- 1.1. The United Kingdom has three separate legal systems; one each for England and Wales, Scotland and Northern Ireland. This reflects the historical origins of the UK and the fact that Scotland and Ireland, (including Northern Ireland at the time), retained their own legal systems under the Acts of Union of 1707 and 1800 respectively.

- 1.2. Overarching the three distinct legal systems is the law of the United Kingdom, which applies to the entirety of the United Kingdom. Most notably, this includes constitutional law.
- 1.3. There is a substantial overlap between the three legal systems and jurisdictions in the UK, however, each jurisdiction has its own courts which interpret and apply the applicable laws, including legal principles which have been established over time through judicial systems, known as the common law. It is sometimes possible for parties to choose which jurisdiction's laws apply in private law (such as a choice of law clause in a contract), whereas in public law (including criminal law), the procedural rules are determined by the jurisdiction in which the case is being heard and cannot be overridden by the parties involved.
- 1.4. The UK's highest civil appeal court is the Supreme Court of the United Kingdom and its decisions are binding across all three UK legal jurisdictions.
- 1.5. In 1998, the Scotland Act, the Northern Ireland Act and the Government of Wales Act were enacted, creating devolved legislatures in Scotland, Northern Ireland and Wales respectively. The devolved legislatures have the power to create primary law which will apply in their respective jurisdictions in their areas of competence. Each of the devolved legislatures has different powers and areas of competence, meaning that devolution is not a generic concept and has been implemented in different ways and to different extents in each part of the UK. Other areas of law are reserved to the UK Parliament at Westminster and the devolved legislatures cannot act in a manner which would affect the operation of UK law, or which would impinge on reserved areas.
- 1.6. Devolution should be considered separately from the distinct legal jurisdictions in the UK.
- 1.7. Data protection law is not a devolved issue and is the same across the UK, and the ICO regulates the whole of the UK. However, there may be some differences in legal process and how data protection law interacts with other laws in Scotland and Northern Ireland. There may also be some differences in how it interacts with other laws in devolved areas, such as health or education, across all four nations of the UK.¹
- 1.8. Freedom of information law is different. The Freedom of Information Act 2000 operates in the same way in England, Wales and Northern Ireland,

¹ For example, in Scotland, a person aged 12 is legally recognised as being of sufficient age and maturity to be able to exercise their own data protection rights, unless the contrary is shown. Whereas, in England and Wales, and in Northern Ireland, it is considered a reasonable starting point, but is not legally binding.

but differently in Scotland. The ICO only regulates the application of freedom of information law in England, Wales and Northern Ireland. Scotland has its own separate freedom of information law² which applies to Scottish public bodies and is overseen by the Scottish Information Commissioner.

2. English and Welsh Law

- 2.1. English and Welsh law, often referred to as simply English law, is the legal system which is administered by the courts in England and Wales, and covers both civil and criminal matters. It is based on the principles of common law and is generally considered to have its own legal doctrine, distinct from the civil law systems in continental Europe, which are largely based on written codes and constitutions.
- 2.2. English and Welsh law has never been comprehensively codified (collected and restated in a written document, such as the US Constitution) and has been developed in the courts through the application of statute, judicial precedent and case-by-case reasoning based on legal principles.
- 2.3. In the absence of statute, the common law forms a residual source of law, based on judicial decisions and precedents.
- 2.4. England, unlike Scotland, Wales and Northern Ireland, does not have its own devolved legislature. Instead, Acts of the UK Parliament in Westminster almost invariably apply in England, albeit that they can also, in some cases, apply to the entirety of the UK.³ UK-wide legislation can also apply in different ways in different parts of the UK. For example, the '*Extent*' section in any Act of the UK Parliament may specify which sections of the Act apply to each of the constituent nations of the UK.
- 2.5. International treaties, such as the European Convention on Human Rights, only have effect in English law if adopted and ratified by an Act of Parliament.
- 2.6. European Union law was previously of significant importance in English law, either through its direct effect by virtue of the UK's status as an EU Member State, or through domestic legislation which implemented EU laws. Upon the UK's departure from the EU, all existing applicable laws

² Freedom of Information (Scotland) Act 2002

³ The UK Parliament does have the power to pass legislation which only applies to a specific part of the UK, but does not apply in England, for example, the Partnerships (Prosecution) (Scotland) Act 2013 only applied in Scotland.

were transposed into domestic law. The continuing application of those retained EU laws is currently subject to a review by the UK Government.

Sources

- 2.7. In English law, the hierarchy of sources of law is as follows: legislation (both primary and secondary), case law, constitutional conventions, general customs and books of authority (although these are largely only of historical significance as sources of law).
- 2.8. Constitutional conventions are understandings about how Parliament and members of the government should act, which, although not legally enforceable, are widely observed. They can be written (such as the Ministerial Code and the Cabinet Manual), or unwritten (such as the Sewel Convention (see below) and the Lascelles Principles concerning the dissolution of Parliament). Whilst courts may take account of conventions, they cannot be legally enforced.⁴

1) Legislation

- 2.9. Legislation is the primary source of English law and includes both primary legislation in the form of Acts of the UK Parliament and secondary (or delegated) legislation, in the form of orders and statutory instruments issued by Government ministers to whom Parliament has granted powers.
- 2.10. Under the principle of parliamentary sovereignty, Parliament is deemed to be the supreme organ of government and is superior to both the courts and the executive. This means that Parliament can pass statutes on any matter and Parliament cannot bind its successors (i.e. any law can be overridden or abolished by a subsequent Act of Parliament).
- 2.11. This also means that statute must take precedence in the event that it conflicts with any other source of law and whilst the courts are charged with interpreting and applying legislation, they cannot declare an Act of Parliament to be invalid.
- 2.12. The UK Parliament can legislate for the whole of the UK in areas that are '*reserved*' (i.e. areas in which the devolved administrations do not have competence), such as defence. Whereas in devolved areas, such as healthcare and education, Acts of the UK Parliament only apply to England (unless otherwise stated) and will generally contain a provision

⁴ R (on the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5

which excludes or modifies their application to Scotland, Wales and Northern Ireland.

- 2.13. The European Communities Act of 1972 bound the UK to EU law and provided that EU law was capable of directly influencing the laws of the UK. This meant that some EU laws, (eg EU Regulations) were directly effective across the UK, whereas others (eg EU Directives) were given effect via domestic implementing legislation, such as the Working Time Regulations 1998.
- 2.14. However, the UK exited the EU on 31 January 2020, with a transition period, during which the UK was still bound by EU law, ending on 31 December 2020.
- 2.15. As explained above, in many cases, domestic legislation gave effect to principles or developments derived from EU law and so remained valid and in force regardless of the UK ceasing to be an EU Member State.
- 2.16. EU Regulations, which were not implemented through domestic law and applied directly across the UK were transposed into UK law under the European Union (Withdrawal) Act 2018. The same applied to statutory instruments passed during the period of the UK's EU membership under the now repealed European Communities Act 1972.
- 2.17. The Retained EU Law (Revocation and Reform) Bill, currently passing through Parliament, originally provided for the revocation of all retained EU laws which the Government had not chosen to retain and which had not been replaced by domestic legislation by the end of 2023. The Government has since amended its plans so that instead of imposing such a deadline, there is now a list of 600 laws which the Government is seeking to replace by the end of the year.

2) Common Law

- 2.18. Common law, or judge-made law, is a distinct source of law in the English legal system in which decisions of senior judges develop legal principles over time through the doctrine of judicial precedent.
- 2.19. The doctrine of judicial precedent operates due to the hierarchy of courts which exist in the English legal system. The decisions of the higher courts (the Supreme Court, the Court of Appeal and the High Court) set precedents which must then be followed by the courts below them.
- 2.20. Cases can be distinguished on their facts to justify departing from a precedent which appears, on first view, to apply. However, only higher

courts can overrule their own decisions and whilst their decisions bind the courts below them in the hierarchy, they are not binding on courts above them, nor in future cases heard at the same level.

- 2.21. As stated above, where the common law and statute conflict, the latter must take priority pursuant to the doctrine of parliamentary sovereignty. Therefore, the common law acts as a residual source of law, applying in areas in which Parliament has not expressly legislated.

Institutions

- 2.22. The English legal system comprises three branches of state: the executive (the government), the legislature (Parliament) and the judiciary (the courts).

1) The Executive: The Government

- 2.23. The UK Government is led by the Prime Minister, assisted by MPs and peers who are appointed to roles within the Government and are known as ministers. Ministers are allocated specific roles and responsibilities, with those at the heads of government departments (and some others) forming the Cabinet.
- 2.24. The UK is a constitutional monarchy. This means that the Monarch is considered to be part of the executive branch of government and the Government acts on the Monarch's behalf. However, in practice, the role of the Monarch is only formal and symbolic, with the King remaining politically neutral.
- 2.25. The executive is responsible for policy formulation and implementation. It introduces bills into Parliament in an attempt to enact its priorities, whilst Government Ministers are often granted powers in Acts of Parliament to create secondary legislation, such as statutory instruments, regulations and orders.
- 2.26. The Ministry of Justice is led by the Lord Chancellor (also known as the Justice Minister), who is a member of the Government and the Cabinet. Until 2005, the Lord Chancellor acted as the head of the English and Welsh judiciary and sat in the Appellate Committee of the House of Lords (the predecessor of the UK Supreme Court). However, the Constitutional Reform Act 2005 removed the judicial role and functions of the Lord Chancellor. Although, by convention, the Lord Chancellor is a qualified solicitor or barrister, following the Constitutional Reform Act 2005, this is no longer a legal requirement.

2.27. The chief legal advisers to the Government on English and Welsh matters are the Attorney General for England and Wales and the Solicitor General for England and Wales. The Government is also advised by the Advocate General for Northern Ireland and the Advocate General for Scotland on matters relating to Northern Irish law and Scots law respectively. The Welsh Government also has its own chief legal adviser, the Counsel General.

2) The Legislature: The UK Parliament

2.28. The UK Parliament is the legislative body in the English legal system. It is comprised of the Crown, the elected House of Commons and the largely appointed House of Lords.

2.29. New laws are introduced in Parliament as bills, which are scrutinised, debated and voted on by MPs and peers. Bills must be approved by both Houses of Parliament in order to become law. However, as the elected chamber, the Commons can force legislation through Parliament in the event of a disagreement with the Lords.⁵ Bills approved in Parliament must then be signed into law by the Monarch, in a formal process known as Royal Assent.

2.30. As explained above, England does not have its own devolved legislature, although the vast majority of Acts of the UK Parliament apply to England. Whilst some, such as those relating to defence and international relations, apply throughout the UK, others, which concern areas in which legislative competence has been granted to the devolved legislatures, will generally state that the extent, if any, to which they apply in Scotland, Wales and/or Northern Ireland.

3) The Judiciary: The English and Welsh Courts

2.31. The judicial branch comprises both civil and criminal courts at various levels, with different types of judges sitting in the different courts. There are no separate criminal or civil courts for Wales, unlike for Northern Ireland and Scotland. Following the Constitutional Reform Act 2005, the judiciary of England and Wales is led by the Lord Chief Justice.

2.32. The UK Supreme Court is the highest appeal court in almost all cases in England and Wales⁶, as well as in relation to devolution matters. It is comprised of Justices of the Supreme Court, who are led by the President of the Supreme Court.

⁵ The supremacy of the House of Commons takes effect through the operation of the Parliament Acts of 1911 and 1949.

⁶ The High Court of Justiciary acts as the supreme appellate court for all criminal cases in Scotland.

- 2.33. The Court of Appeal hears appeals from other courts and tribunals and is made up of two divisions. The Civil Division hears appeals from the High Court, County Court and some appellate tribunals. The Criminal Division hears appeals relating to serious offences from the Crown Court. Its decisions are binding on all courts, including itself, apart from the Supreme Court. The Court of Appeal's judges are known as Lords/Lady Justices of Appeal. The Civil Division is led by the Master of the Rolls, whilst the Criminal Division is led by the Lord Chief Justice.
- 2.34. The High Court operates both as a civil court of first instance and as an appeal court for civil and criminal matters. It is made up of three divisions, the King's Bench, the Chancery and the Family divisions. Each have slightly different procedures and cases are assigned to a division depending on their subject matter. The Business and Property Courts were established as part of the High Court in July 2017 and replaced specialist courts which previously formed part of the King's Bench Division. The High Court judiciary are known as Justices of His Majesty's High Court of Justice or Masters.
- 2.35. The Crown Court operates as both a court of first instance and as an appeal court for criminal matters, whilst it also deals with a limited amount of civil matters. More serious, (*'indictable'*), criminal offences and some less serious, (*'either way'*) offences are heard by the Crown Court at first instance, whilst it also hears appeals against decisions of magistrates' courts. High Court justices, circuit judges and recorders hear cases in the Crown Court.
- 2.36. The County Court is a national court which only hears civil cases. Proceedings in the County Court are overseen by a circuit or district judge. The Family Court hears all family cases in England and Wales at first instance.
- 2.37. Magistrates' courts are the criminal courts where all criminal proceedings start and are presided over by a bench of magistrates or a district judge. There are no juries in magistrates' courts. Youth courts are similar to magistrates' courts, but deal with offenders between the age of 10 and 17.
- 2.38. There are also a number of specialist courts, known as tribunals, which deal with particular types of cases and whose decisions can be appealed to the High Court or the Court of Appeal. Examples of specialist tribunals include employment tribunals, the Employment Appeal Tribunal, the First Tier Tribunal and the Upper Tribunal.

Wales

- 2.39. Wales is not a separate legal jurisdiction, and the courts in Wales apply the law of England and Wales and there is no separate Welsh criminal law.
- 2.40. However, the Government of Wales Act 1998 established the National Assembly for Wales, later renamed the Welsh Parliament (Senedd Cymru). Powers over areas including agriculture, culture, economic development, education, health, housing, local government and social services were transferred to the Welsh Parliament.
- 2.41. The Government of Wales Act 2006 made the Welsh Parliament a full legislative body, with the Welsh Government as the devolved executive for Wales. The Act also granted further powers to the Welsh Parliament and created the office of the Counsel General, the chief legal adviser to the Welsh Government.⁷
- 2.42. The UK Parliament can also pass '*Wales-only laws*' which only apply to Wales and which grant the Welsh Parliament the power to make secondary legislation, or transfer other powers to the Welsh Government. The Transport (Wales) Act 2006, which granted powers over transport in Wales to the Welsh Government, is an example of such legislation.
- 2.43. '*Welsh law*' is the term used to describe the primary and secondary legislation passed by the Welsh Parliament and the Ministers of the Welsh Government. However, because Wales is not a separate legal jurisdiction, Welsh law still officially forms part of the law of England and Wales.

3. Scots Law

- 3.1. The Acts of Union of 1707 abolished the Scottish and English Parliaments and established a Parliament of Great Britain (which subsequently became the UK Parliament). However, Scottish private law and the Scottish courts were retained as a distinct legal jurisdiction.
- 3.2. This has meant that, in certain areas, Scottish law has remained distinct from English and Welsh law. Areas in which Scots law is different from the other UK legal systems include property law, criminal law, the law of trusts, inheritance law, family law and the law on evidence in judicial proceedings, whilst the age of legal capacity in Scotland is 16, compared to 18 in England and Wales. Contract law is also different in Scotland,

⁷ Government of Wales Act 2006 s.49

whilst there are also certain legal structures and entities which are specific to Scotland. On the other hand, commercial law, consumer rights law, employment law and health and safety regulations are largely equivalent in all UK jurisdictions.

- 3.3. The preservation of this distinction has required the UK Parliament to pass Acts which apply solely to Scotland (e.g. the Scottish Enterprise Act 1999 and the Registered Establishments (Scotland) Act 1998), or to clarify the extent to which Acts of the UK Parliament apply in Scotland.
- 3.4. However, since the enactment of the Scotland Act 1998, the Scottish Parliament has possessed the power to create primary legislation in areas in which it has been granted competence (see below).

Sources

- 3.5. Scots law recognises four sources of law: legislation, legal precedent or common law, specific academic writings and custom (although the latter two sources are largely only of historical significance).

1) Legislation

- 3.6. The UK Parliament has the power to pass primary legislation on any issue which will apply cross the UK. However, under the Sewel Convention, the UK Parliament will not normally legislate in areas which are devolved to the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly without their consent, albeit that it retains the power to ignore the views of the devolved legislatures.⁸ The UK Parliament can also delegate powers to Ministers to introduce secondary legislation in the form of statutory instruments, which can also apply to Scotland. Ministers of the Scottish Government may also be granted the power to create secondary legislation in Acts of the Scottish Parliament.
- 3.7. The Scottish Parliament can pass primary legislation only affecting Scotland in the areas in which it has been granted legislative competence (including economic development, health, housing and education). However, it cannot legislate beyond these areas, nor in a manner which would affect the operation of UK-wide laws.
- 3.8. Legislation passed by the pre-1707 Parliament of Scotland, also continues to have effect. Whilst the majority of such Acts have now been repealed, some, such as the Leases Act 1449, continue to apply.

⁸ The Sewel Convention is recognised, but not given legal effect, in s.28(8) of the Scotland Act 1998 (as inserted by s.2 of the Scotland Act 2016) and s.107(6) of the Government of Wales Act 2006 (as inserted by s.2 of the Wales Act 2017).

2) Common Law

- 3.9. Common law is an important source of law in Scotland, particularly in the criminal law where many crimes, such as murder, have never been codified, but instead rely on legal precedent.
- 3.10. The sources of Scottish common law are the decisions of the Scottish courts and, to an extent, the decisions of the UK Supreme Court in civil matters.⁹
- 3.11. In criminal cases, the highest Scottish appellate court is the High Court of Justiciary, meaning that common law related to criminal law has been developed exclusively through the Scottish courts.
- 3.12. Rulings of the European Court of Human Rights and the Court of Justice of the European Union have also contributed to Scottish common law in relation to the interpretation of the European Convention on Human Rights and EU-derived laws respectively.

Institutions

- 3.13. The Scottish legal system contains three institutions: the executive (the Scottish Government), the legislature (the Scottish Parliament) and the judiciary (the Scottish courts).

1) The Executive: The Scottish Government

- 3.14. The Scottish Government is led by the First Minister, who is formally appointed by the King, and is responsible for formulating policy and implementing laws passed by the Scottish Parliament. The First Minister appoints and is assisted by Cabinet Secretaries who each have separate portfolios (e.g. justice and health). Ministers are also appointed to assist Cabinet Secretaries.
- 3.15. The Scottish Law Officers, the Lord Advocate and the Solicitor General, are appointed by the King, on the advice of the First Minister and with the approval of the Scottish Parliament. They are the chief legal advisers to the Scottish Government and can also represent the Scottish Government in disputes relating to devolution.¹⁰

⁹ Whilst there is debate as to whether decisions of the UK Supreme Court are binding in Scotland when they relate to cases from other jurisdictions, it is clear that they form binding precedents where such decisions are taken in respect of appeals originating in Scotland.

¹⁰ For example the Lord Advocate represented the Scottish Government at the Supreme Court in 2022 in a case concerning the Scottish Parliament's power to legislate for a referendum on Scottish independence. See Reference by the Lord Advocate of Devolution Issues under Paragraph 34 of Schedule 6 to the Scotland Act 1998 [2022] UKSC 31

3.16. Together the First Minister, the Cabinet Secretaries, ministers and the Scottish Law Officers are the Members of the Scottish Government.

2) *Legislature: The Scottish Parliament*

3.17. The Scottish Parliament was created by the Scotland Act 1998 and legislates in areas devolved to it by the UK Parliament.

3.18. Areas in which the Scottish Parliament has competence include health, education, criminal justice, local government, environment and civil justice. Whereas matters relating to defence, international relations, economic policy and drugs law are reserved to the Westminster Parliament.

3.19. The Scotland Acts of 2012 and 2016 extended the Scottish Parliament's power to vary the rate of income tax which applies in Scotland.¹¹

3.20. Whilst the UK Parliament theoretically retains the power to legislate for Scotland on any matter, under the Sewel Convention (see above), it does not normally legislate on devolved matters without the agreement of the Scottish Parliament.

3) *The Judiciary: The Scottish Courts*

3.21. The Scottish criminal justice system is made up of the Justice of the Peace Courts, the Sheriff Courts and the High Court of Justiciary.

3.22. The Justice of the Peace Courts (equivalent to magistrates' courts) deal with less serious criminal offences, whilst the Sheriff Courts (equivalent to Crown Courts) deal with some more serious criminal cases in proceedings before a Summary Sheriff, a Sheriff or a Sheriff and a jury. Appeals against convictions and sentences imposed in the Sheriff Courts are heard by the Sheriff Appeal Court, whose decisions can only be appealed to the High Court of Justiciary on points of law.

3.23. The High Court of Justiciary also deals with the most serious criminal offences and is the supreme criminal court in Scotland, with no possibility of appeal to the UK Supreme Court, (unless a breach of the European Convention on Human Rights is alleged).

3.24. Lower value and less complex civil cases are heard at first instance by the Sheriff Courts, with the possibility of appeal to the Sheriff Appeal Court and onward to the Inner House of the Court of Session, but only

¹¹ The Scotland Act 1998 gave the Scottish Parliament the power to vary the rate of income tax which applies in Scotland by 3p in the pound (compared to the rate which applies in England and Wales). This reflected the outcome of the 1997 referendum which asked Scots whether they believed there should be a Scottish Parliament, and whether it should have tax-varying powers. The 2012 and 2016 Acts extended these powers.

with permission, which will only be granted where the case raises some important point of principle, or where there is some other compelling reasons to allow the appeal. The Outer House of the Court of Session hears more complex and high-value civil cases at first instance, with its decisions capable of being appealed to the Inner House and then, with permission, to the UK Supreme Court.

- 3.25. There are also a number of specialist Scottish courts which hear specific types of cases, including the Sheriff Personal Injury Court, the Lands Tribunal for Scotland and the Scottish Land Court. Some UK-wide tribunals also have jurisdiction over Scotland.
- 3.26. The Scottish legal profession is comprised of solicitors and advocates, with the latter being specialists in the art of advocacy (the presentation of a case in court) and are the equivalent of barristers in England and Wales. Scottish solicitors are regulated by the Law Society of Scotland, whilst Scottish advocates are regulated by the Faculty of Advocates.

4. Northern Irish Law

- 4.1. Northern Irish law is the legal system of statute and common law which operates in Northern Ireland. Prior to 1921, Ireland (including what is now Northern Ireland and the Republic of Ireland) was an independent jurisdiction, although it was a part of the UK. The Government of Ireland Act 1920 led to the initial partition of Ireland and created a devolved legislature in Northern Ireland, whilst Ireland remained as part of the UK. This led to the Anglo-Irish Treaty, which resulted in 'Southern Ireland' leaving the UK and becoming an independent State.
- 4.2. Like England and Wales, Northern Ireland is a common law jurisdiction. Although the Northern Irish common law is similar to that in England and Wales and is partially derived from the same sources, there are some key differences in both law and procedure.
- 4.3. The Northern Ireland Act 1998 created the Northern Ireland Assembly, the devolved legislature for Northern Ireland and the Northern Ireland Executive, the devolved government of Northern Ireland. As with its counterparts in Scotland and Wales, the Northern Ireland Assembly has powers to legislate in a range of areas not reserved to the UK Parliament in Westminster, including agriculture, health, education, justice and infrastructure.

Sources

- 4.4. Northern Irish law is derived from both statute and the common law. The rules of common law were imported into Northern Ireland from English law when it was subject to English rule and replaced Irish customary laws. The common law is further developed by the Northern Irish courts through the principle of judicial precedent.
- 4.5. The current statute law of Northern Ireland predominantly comprises Acts of the UK Parliament which apply to Northern Ireland, Acts of the Northern Irish Assembly and statutory instruments (secondary legislation) made by ministers of both the Northern Ireland Executive and the UK Government.
- 4.6. Following the dissolution of the old Northern Ireland Parliament in 1972, Northern Ireland was ruled directly from Westminster,¹² with laws made through Orders in Council by the UK Government. Some important legislative measures were passed under this procedure, such as the Criminal Evidence (Northern Ireland) Order 1988 and the Fair Employment and Treatment Order (Northern Ireland) 1998.

Institutions

- 4.7. The Northern Irish state is comprised of three institutions: the executive (the Northern Ireland Executive), the legislature (the Northern Ireland Assembly) and the judiciary (the Northern Irish courts).

1) The Executive: The Northern Ireland Executive

- 4.8. The Northern Ireland Executive was created by the Northern Ireland Act 1998 and is the devolved government of Northern Ireland. The Executive is comprised of the First and Deputy First Ministers and various ministers with individual portfolios and responsibilities.
- 4.9. The Northern Ireland Executive is responsible for initiating and implementing legislative proposals, discussing and agreeing upon significant or controversial matters and conducting external relations.
- 4.10. The Minister of Justice leads the Northern Irish Ministry of Justice and is elected by a cross-community vote in the Northern Ireland Assembly. The Attorney General for Northern Ireland is the chief legal adviser to the Northern Ireland Executive.

2) The Legislature: The Northern Ireland Assembly

¹² There was a brief period between 1973 and 1974 during which there was a Northern Ireland Assembly. This was established as part of the peace negotiations which took place during the 1970s. The Assembly was abolished in the same way as the former Northern Ireland Parliament.

- 4.11. The Northern Ireland Assembly is the devolved legislature of Northern Ireland and has the power to legislate in a wide range of areas which are not expressly reserved to the UK Parliament. It was formally created by the Northern Ireland (Elections) Act 1998, which ended the period of direct rule by the UK Parliament which followed the abolition of the Parliament of Northern Ireland in 1973 and the Northern Ireland Assembly in 1974.
- 4.12. The legislative competencies of the Northern Irish Assembly were not expressly set out in the Northern Ireland Act 1998. Instead, the Assembly has powers over areas not explicitly reserved to the UK Parliament. These are known as '*transferred matters*' and include agriculture, the economy, education, health, finance, infrastructure, housing, social security, employment services and culture.
- 4.13. Areas in which the UK Parliament retains sole competence can be separated into those which are '*excepted*' and those which are '*reserved*'. '*Excepted matters*' are those over which the UK Parliament retains control indefinitely, such as international relations, taxation and defence. '*Reserved matters*' are those over which the UK Parliament retains control for the time being, but which may be transferred to the Northern Ireland Assembly at a future date, such as the national minimum wage, consumer safety and postal services.

3) *The Judiciary: The Northern Irish Courts*

- 4.14. As a separate legal jurisdiction, Northern Ireland has its own system of civil and criminal courts. However, the UK Supreme Court is the final court of appeal for all civil and criminal cases originating in Northern Ireland.
- 4.15. The Court of Judicature of Northern Ireland is the collective body of superior courts in Northern Ireland and is comprised of the Court of Appeal in Northern Ireland, the High Court of Justice in Northern Ireland and the Crown Court.
- 4.16. The Court of Appeal is the highest court in Northern Ireland and hears appeals in both criminal and civil matters from the courts below it. Decisions of the Court of Appeal can be appealed to the UK Supreme Court.
- 4.17. The High Court of Northern Ireland sits below the Court of Appeal and functions in much the same way to its equivalent in England and Wales, acting as both a first instance and appellate court. It is also split into

three divisions: the King's Bench Division, the Family Division and the Chancery Division.

- 4.18. The Crown Court hears more serious criminal cases, whilst magistrates' courts deal with less serious criminal offences and preliminary hearings for more serious cases.
- 4.19. The County Courts are the main civil courts in Northern Ireland and deal with a wide range of civil actions, consumer claims and appeals from magistrates' courts. However, high value civil cases are heard in the High Court at first instance.

5. Data Protection and Freedom of Information Law Across the UK

- 5.1. The Freedom of Information (Scotland) Act 2002 (the **2002 Act**) is an Act of the Scottish Parliament which governs access to information held by Scottish public authorities. It came into force on 1 January 2005. It created the Scottish Information Commissioner, whose duties are similar to those of the Information Commissioner, but are limited to bodies covered by the 2002 Act.
- 5.2. The 2002 Act does not apply to Scottish-based branches of UK governmental departments, nor to the Scottish parts of any UK-wide bodies, which are subject the Freedom of Information Act 2000 (**FOIA**).
- 5.3. The 2002 Act is generally similar to the Freedom of Information Act 2000, albeit with some differences in its interpretation and application. For example, the public interest test which applies to the qualified exemptions in Part 2 of the 2002 Act refers to the release of information being likely to '*substantially prejudice*' the interests or purposes the exemption is designed to protect, rather than merely being '*likely to prejudice*' as in FOIA. The time limit for consideration of the public interest when applying an exemption is also stricter under the 2002 Act than it is under FOIA.¹³
- 5.4. Scottish public authorities are also subject to the Environmental Information (Scotland) Regulations 2004, which is overseen by the Scottish Information Commissioner.
- 5.5. In contrast, FOIA and the Environmental Information Regulations 2004 both apply to public authorities in Northern Ireland.

¹³ The 2002 Act does not contain an equivalent of s.10(3) of FOIA which grants public authorities a 'reasonable time' in the circumstances to consider whether the public interest favours the disclosure or withholding of the information requested.

- 5.6. Both the UK GDPR and the Data Protection Act 2018 apply in Scotland and Northern Ireland. However, how data protection law is applied may vary due to differences between Scots law and Northern Irish law and the law of England and Wales, as well as the impact of legislation passed by the Scottish Parliament and Northern Irish Assembly in devolved areas.
- 5.7. For example, Scotland considers that children aged 12 and over are legally capable of exercising their own data protection rights, unless the contrary is shown, whereas this is merely a reasonable starting point in England and Wales.
- 5.8. The law relating to powers of attorney, which is relevant when exercising personal data rights on behalf of another, is also different in Scotland and Northern Ireland.
- 5.9. Parental access to their child's educational record is governed by the Pupils' Educational Records (Scotland) Regulations 2003 in Scotland, the Pupil Information (Wales) Regulations 2011 in Wales and the Education (Pupil Records) Regulations (Northern Ireland) 1998.
- 5.10. In Scotland there are also specific restrictions on the disclosure of education data¹⁴ and social work data¹⁵ by Scottish local authorities (the data controllers for Scottish state schools) in response to a subject access request. The exemption to the right of access under Article 15 of the UK GDPR in respect of child abuse data¹⁶ does not apply in Scotland.¹⁷
- 5.11. In Northern Ireland, access to a deceased person's medical records is governed by the Access to Health Records (Northern Ireland) Order 1993.¹⁸

Source of Document:	Policy Legal	Ref:	DH
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Current Status:	No amendments pending
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¹⁴ Data Protection Act 2018 Schedule 3 Part 4 Paragraph 20

¹⁵ Data Protection Act 2018 Schedule 3 Part 3 Paragraph 12

¹⁶ Data Protection Act 2018 Schedule 3 Part 5 Paragraph 21

¹⁷ Data Protection Act 2018 Schedule 3 Part 5 Paragraph 21(5)

¹⁸ Elsewhere in the UK the Access to Health Records Act 1990 applies

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Conducting ICO criminal investigations in Scotland

Background:

In 2010 the UK Supreme Court ruled that Scottish police could **no longer question suspects without their lawyer**.

The decision was made after judges upheld an appeal by [REDACTED] whose assault conviction was based on evidence gained before he spoke to his lawyer. His lawyers argued this was a breach of his human rights.

Previously suspects in Scotland could be questioned for six hours without a lawyer present, but judges ruled this violated their human rights in line with an ECHR decision that suspects having access to a lawyer was fundamental to them receiving a fair trial.

Subsequently a review, known as the Carloway Report, was undertaken into Scottish criminal law and practice:

<http://www.gov.scot/Resource/Doc/925/0123001.pdf>

This sets out recommendations including access to lawyer and abolishing the 'corroboration' rule.

In April 2015 Lord Bonomy published an independent review as to what additional safeguards and changes to law and practice may be needed to Scotland's criminal justice system following the planned abolition of the corroboration requirement in the Criminal Justice Scotland Bill.

Some of his recommendations included:

- That a Code of Practice should be published in connection with identification procedures and interviewing of suspects
- The corroboration requirement should be retained for hearsay evidence.
- The corroboration requirement should be retained in relation to confession evidence.

Subsequently, the Criminal Justice (Scotland) Bill 2016 was passed by the Scottish Parliament on 8th December 2015 and received Royal Assent on 13th January 2016.

It is due to come into force in the summer of 2017 with the Codes of Practice (similar to the PACE codes) to be published in 2018.

A summary of the changes and how they impact on Specialist Reporting Agencies (SRA's, which includes the ICO) and in particular to voluntary interviews, is found here: [Scotland Law Changes PPT](#)

Corroboration¹:

The corroboration rules are still in use and their requirement for corroboration of evidence in criminal cases is an ancient and highly distinctive feature of Scots criminal law. The Carloway Report provides a description of the rule:

"there must first be at least one source of evidence (i.e. the testimony of one witness) that points to the guilt of the accused as the perpetrator of the crime. That evidence may be direct or circumstantial. Secondly, each "essential" or "crucial" fact, requiring to be proved, must be corroborated by other direct or circumstantial evidence (i.e. the testimony of at least one other witness)."

The requirement for corroboration does not therefore require every fact in a case to be proved by two witnesses: *"Corroboration is about the number of witnesses available to prove facts. It is not about number of facts available to prove guilt."*

Examples of corroboration

- DNA: a forensic sample can be the only evidence required to identify a perpetrator, but there must be two 'witnesses' to: (a) the finding of the sample at the crime scene; (b) the obtaining of a sample from the accused; and (c) the comparison between those two samples.
- Eyewitnesses: if one witness states that he or she saw the accused commit a crime, this could be corroborated by testimony from another witness if it is sufficiently similar or consistent to confirm the testimony of the first witness. The evidence of the second eyewitness is needed to support that of the first witness and need not be directly incriminating on its own.
- Eyewitness/circumstantial: where one witness states that he or she saw the accused commit a crime, this could be corroborated by circumstantial evidence confirming or supporting the eyewitness' evidence.
- Circumstantial: In some cases a combination of circumstantial evidence from two or more sources can provide corroboration.

¹ Extract from gov.scot website. <http://www.gov.scot/Publications/2012/07/4794/11>

Historically, the requirement for corroboration has been regarded as an important protection against an accused person being convicted unsafely on the basis of the evidence of a dishonest or mistaken witness.

Impact on ICO investigations:

In the main, how we currently conduct criminal investigations in the rest of the UK is and will be compliant with the introduction of this new legislation in Scotland, subject to the following caveats:

- Gathering of evidence will have to follow the corroboration rules as outlined above
- Scottish witness statements don't have the declaration about truth and it is called a 'statement of facts'.
- Best practice is to record the statement in person and witness the 'signing' of the statement whilst ICO officers are present.
- The 'caution' is different to the rest of the UK. There are no specific form of words used other than the suspect must be informed that *'they are not obliged to say anything'*.
- Inferences can't be drawn from silence or a change in a suspects version of events from that given at interview to that given at court
- Disclosure is similar and in principle follows the CPIA²
- When interviewing the nominated representative of the 'body corporate' there is no requirement to caution.

Reporting cases to the COPFS

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's prosecution service. They receive reports about crimes from the police and other reporting agencies and then decide what action to take, including whether to prosecute someone, applying the evidential and public interest tests similar to the Code for Crown Prosecutors in the rest of the UK.

SRA's report their cases to the COPFS electronically via an online portal - Specialist Reporting Agencies Secure Web Site (SRAWEB)³.

To report cases to the COPFS, all SRA's have to be registered and to complete online training prior to the submission of their first 'live' case.

The ICO is already registered as a specialist reporting agency but we need to identify staff to undertake the training and register with SRAWEB.

² http://www.crownoffice.gov.uk/images/Documents/Prosecution_Policy_Guidance/Disclosur_Manual/Chapter%203.pdf

³ [SRAII secure website application](#)

Standard Prosecution Report (SPR)

The SPR is the electronic form that is completed in order to submit a case to the COPFS.

From inputs at the Glasgow training event on 14/11/16 the proper completion of the SPR is crucial to a successful outcome - firstly in the case not being rejected by the COPFS and secondly when the case proceeds to court.

The following points are to be noted prior to SPR submission:

- Can the matter under investigation be dealt with by way of a remedial sanction by the SRA ie advice or civil sanction
- Is there a legal limitation to the offence under investigation ie a time- bar
- There must be a clear reason to report the case ie is it in the public interest

The report must contain:

- A coherent narrative so it can be understood
- Sufficient admissible, reliable and credible evidence
- Containing all relevant information
- Presentation of evidence that a **crime** has been committed and **who** has committed it with corroboration of the essential facts.

Report Completion

The format for the SPR is attached below⁴ and is reviewed by a 'Marking Depute' who will only mark what is on the report. On submission, the Depute does not have sight of statements so the information from a witness has to be included. They expect accuracy, brevity and clarity in the reporting format.

The Charge

- The charge must include the date of offence or range
- Location of offence
- Who committed the offence
- Exact section & subsection of the offence

⁴ SPR Report

Description of Events

This is the equivalent of our case summary. COPFS expect that this contains a description of what happened, who saw and did what, detailed in the third person.

They suggest a format known as 'BDA' with the events in chronological order not in the order the evidence was discovered by the SRA.

- **Before** – relevant events prior to the offence
- **During** – relevant events during the commission of the offence covering the essential elements required to prove it
- **After** – relevant events after, outlining the SRA investigation and action.

NB:

- All time is in 24 hour clock
- Provide evidence of planning and preparation by the offenders
- The confidential information section of the report is known as 'Remarks' so include for example - reasons for delay in reporting, difficulties with witnesses and any technical assistance used.
- Ensure the report is checked before submission as the COPFS role is not to check work
- **If the SPR is not right on submission they will reject it and not return it for rework**
- **It must set out the evidence and all aspects of the charge and if it does not the outcome will not be good...their words.**

Next Steps

Although the above requirements are prescriptive and appear onerous, the way the CRIT currently report to the ICO Prosecutor more than meets the standard expected of COPFS.

COPFS were keen to indicate that communication was 'key' when first reporting to them so any issues or evidential difficulties can be identified and resolved quickly so when further files are submitted both the SRA/COPFS understand how they each operate.

At Appendix A is a list of suggested actions to be completed in order to prepare for the ICO's first file submission on the SRAWEB.



6/12/16

Appendix A

Action	Allocated to:	Comments
Identify staff to register with SRAWEB	DM/DMK	Suggest DM & DMK register along with two staff – AMG /LM?
Complete registration with SRAWEB	DM	
Identify first case for submission	DMK	
Allocated Case Officer to complete the test cases overseen by line manager	TBA	Suggest I oversee the first case and have examples of completed SPR's.
Obtain templates of witness statement to be used	DM	HSE website includes a section on investigating cases in Scotland so this can be used as a resource.
Update ICO letters for suspect/witness/DC/DS to reflect the new Scottish legislation	DM	
Gain access to SCRO		Requirement for suspects to have been checked on this system - similar to PNC.
Liaise with ICO IT & IG to check system requirements/issues with access to SRAWEB portal	MS?	