

TO: EXECUTIVE COMMITTEE

MEMORANDUM OF UNDERSTANDING AND SUPPLEMENTARY AGREEMENTS

Issue

1. The Secretary of State wrote on 6 December 1999 to the First Minister and Deputy First Minister formally proposing a Memorandum of Understanding as a framework for working relations between the UK Government and the devolved NI administration. A similar framework has been agreed between the UK Government and Scotland and Wales.
2. The Memorandum of Understanding was issued to Executive Committee members on 10 December 1999 for consideration, copy attached for ease of reference.

Detail

3. The Memorandum of Understanding (MOU) sets out principles which would underpin relations between the UK Government and devolved administrations.
4. These incorporate :-

- the principle of **good communication** with each other, especially where one administration's work may have some bearing upon the responsibilities of another administration;
- recognition of the importance of **co-operation** across a range of areas of mutual interest and that they might need to undertake activities on each other's behalf, perhaps through agency arrangements;
- providing each administration with as full and open as possible access to scientific, technical and policy **information** including statistics and research;
- ensuring that the information each administration supplies to others is subject to appropriate safeguards in order to avoid prejudicing its interests and accepting that in certain circumstances a duty of **confidence** may arise;
- the commitment to providing a satisfactory level of service and accountability to the public and handling **correspondence** in accordance with the *Code of Practice on Access to Government Information* (or similar devolved regimes).

MOU Supplementary Agreements

5. There are five supplementary agreements to the MOU, which provide for:-

- The establishment of a **Joint Ministerial Committee** to bring together the UK Government and the devolved administrations to provide some central co-ordination of the overall relationship;
 - A Concordat on **Co-Ordination of EU Policy Issues**. Specifically this covers provision of information, formulation of UK policy, attendance at Council of Ministers and related meetings, implementation of EU obligations and infraction proceedings;
 - A Concordat on **Financial Assistance to Industry**. The arrangements set out in this Concordat are consistent with the devolution of responsibility from the UK Government to the devolved administrations and will work on the basis of transparency, trust, and consensus;
 - A Concordat on **International Relations touching on the responsibilities of the devolved administrations**. This Concordat will cover among other things exchange of information, formulation of UK policy and conduct of international negotiations and implementation of international obligations;
 - A Concordat on **Statistical work across the UK**. This Concordat sets out an agreed framework for co-operation among the UK Government and the devolved administrations on all matters in relation to statistics.
6. The MOU sets the same principles in relation to the 3 devolved administrations with one exception. The EU Policy Concordat (Northern Ireland) contains an additional paragraph (5) to reflect Northern Ireland's unique position within the UK in terms of relationship with another Member

State. That additional paragraph extends the EU concordat to cover Ministers activities under the North/South Ministerial Council and the EU dimension of the cross-border bodies.

7. The MOU does not create any legal obligations – it is intended as binding in honour only. It is also subject to review at least annually and can be updated as necessary.

Assembly Debate

8. The draft Memorandum of Understanding and supplementary agreements were considered by both the Scottish Parliament and National Assembly for Wales, before formal agreement by the Scottish Ministers and the Cabinet of the National Assembly for Wales.
9. It would be appropriate for the Assembly to be given a similar opportunity here. It is accordingly proposed that the draft MOU and supplementary agreements should be endorsed by the Assembly, along with the NIO/Executive Committee concordat, once it has been discussed and agreed by the Executive Committee.

Recommendations

10. The Executive Committee is invited to :-

- (i) endorse the Memorandum of Understanding and supplementary agreements;

- (ii) note that the draft NIO/Executive Committee concordat will be discussed at a later meeting;
- (iii) agree that the Assembly should be given the opportunity to endorse all of the draft documents before a formal response issues to the Secretary of State.

Executive Committee Secretariat

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MEMORANDUM OF UNDERSTANDING

Introduction

1. This Memorandum sets out the understanding of on the one hand, the United Kingdom Government, and on the other, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee ("the devolved administrations") of the principles that will underlie relations between them. The UK Government represents the UK interest in matters which are not devolved in Scotland, Wales or Northern Ireland¹. Policy responsibility for these non-devolved areas is within the exclusive responsibility of the relevant UK Ministers and Departments. It is recognised by these Ministers and Departments that, within the UK Government, the Secretaries of State for Scotland, Wales and Northern Ireland are responsible for ensuring that the interests of those parts of the UK in non-devolved matters are properly represented and considered. Other UK Ministers and their departments represent the interests of England in all matters.

2. This memorandum is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. It is intended to be binding in honour

¹ The three Acts of Parliament dealing with devolution - the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998 - define the respective functions of the UK Government and the devolved administrations in different ways. This Memorandum simply uses the terms 'devolved' and 'non-devolved'. 'Devolved' means in the Scottish context any function not reserved to the UK Government or Parliament under Schedule 5 of the Scotland Act or transferred to the Scottish Ministers under other legislation; in the Welsh context, any function transferred or conferred on the Assembly by Order or by primary legislation; and in the Northern Ireland context, any function which is not an excepted or reserved matter under Schedules 2 and 3 of the Northern Ireland Act. 'Non-devolved' means anything else.

only. Nothing in this Memorandum should be construed as conflicting with the Belfast Agreement².

3. This memorandum is supplemented by agreements on the establishment of a Joint Ministerial Committee and for certain other areas where it is necessary to ensure uniform arrangements for relations between the UK Government and the three devolved administrations. In particular, broadly uniform arrangements need to apply to: handling of matters with an EU dimension; financial assistance to industry; international relations touching on the responsibilities of the devolved administrations; and statistical work across the UK. In addition, the four administrations may prepare Concordats or make other less formal arrangements to deal with the handling of procedural, practical or policy matters between them. Concordats are not intended to be legally binding, but to serve as working documents.

Communication and Consultation

4. All four administrations are committed to the principle of good communication with each other, and especially where one administration's work may have some bearing upon the responsibilities of another administration. The primary aim is not to constrain the discretion of any administration but to allow administrations to make representations to each other in sufficient time for those representations to be fully considered.

² The British-Irish Agreement done at Belfast on 10 April 1998 and the Multi-Party Agreement reached on the same date and annexed thereto.

5. Against this background, and in confidence where necessary (see paragraph 11 below), the administrations will seek:

- a. to alert each other as soon as practicable to relevant developments within their areas of responsibility, wherever possible prior to publication;
- b. to give appropriate consideration to the views of the other administrations; and
- c. where appropriate, to establish arrangements that allow for policies for which responsibility is shared to be drawn up and developed jointly between the administrations.

It is recognised that there are certain areas of Government action - Budget proposals and national security are two examples - in which, as a matter of existing practice, advance notification does not take place or is very limited. These practices are unaffected by devolution.

6. The Acts provide for statutory consultation by the UK Government with the devolved administrations in relation to certain specific matters, and vice versa. This memorandum does not create any equivalent or other legal right to be consulted.

Co-operation

7. All four administrations want to work together, where appropriate, on matters of mutual interest. The administrations recognise the importance of co-operation across a range of areas. They also recognise

that it may be appropriate for them to undertake activities on each other's behalf, which may be covered in agency arrangements or other agreements.

8. Various public bodies deal with matters within the responsibilities both of the UK Government and of one or more of the devolved administrations. The UK Government and devolved administrations affirm their commitment to work, together where appropriate, to ensure that such bodies continue to operate effectively.

Exchange of information, statistics and research

9. In order to enable each administration to operate effectively, the administrations will aim to provide each other with as full and open as possible access to scientific, technical and policy information including statistics and research and, where appropriate, representations from third parties. These exchanges between administrations may be subject to restrictions or requirements, such as those relating to confidentiality or freedom of information.

10. This Memorandum of Understanding is supplemented by a concordat between the administrations, which provides an agreed framework for co-operation. In particular, the administrations will work together to ensure the provision of coherent, reliable, consistent and timely UK-wide statistics. The concordat also sets out the basis on which statistical information is to be exchanged and used (including requirements for confidentiality), associated costs and expertise are to be shared, and professional standards maintained. Each administration will aim to provide any information that may be reasonably requested by

another administration to enable it to carry out its responsibilities effectively, provided that (a) this is practicable, (b) it would not involve disproportionate cost, and (c) the information is available in reasonably accessible form. The emphasis will always be on exchanging information where this proves possible. Where any of these three provisos is not met, problems will be resolved on a case-by-case basis.

Confidentiality

11. Each administration will wish to ensure that the information it supplies to others is subject to appropriate safeguards in order to avoid prejudicing its interests. The four administrations accept that in certain circumstances a duty of confidence may arise and will between themselves respect legal requirements of confidentiality. Each administration can only expect to receive information if it treats such information with appropriate discretion. In particular the administrations accept:

- a. it is for the administration providing the information to state what, if any, restrictions there should be upon its usage;
- b. each administration will treat information which it receives in accordance with the restrictions which are specified as to its usage;
- c. disclosure of information will be subject to the Code of Practice on Access to Government Information (or equivalent devolved regimes) and in due course the requirements of future freedom of information régimes:

sub-paragraphs a. and b. will apply to all information and difficult cases may be referred back to the originator for consideration; and

d. some information will be subject to statutory or other restrictions: this may mean that there will be restrictions on the category of persons who may have access to some material, for example under the Official Secrets Act; and there will be a common approach to the classification and handling of sensitive material.

Correspondence

12. The four administrations are committed to providing a satisfactory level of service and accountability to the public in this area. As was the case prior to devolution officials will need to handle all correspondence in accordance with the Code of Practice on Access to Government Information (or similar devolved regimes). When in force, decisions on disclosure will need to be taken in accordance with the relevant legislation on Freedom of Information.

Parliamentary Business

13. The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations

will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.

14. The United Kingdom Parliament retains the absolute right to debate, enquire into or make representations about devolved matters. It is ultimately for Parliament to decide what use to make of that power, but the UK Government will encourage the UK Parliament to bear in mind the primary responsibility of devolved legislatures and administrations in these fields and to recognise that it is a consequence of Parliament's decision to devolve certain matters that Parliament itself will in future be more restricted in its field of operation.

15. The devolved legislatures will be entitled to debate non-devolved matters, but the devolved executives will encourage each devolved legislature to bear in mind the responsibility of the UK Parliament in these matters.

16. These same principles will be applied to other aspects of each administration's responsibilities towards its Parliament or Assembly. The administrations will provide each other, so far as appropriate and practicable, with information necessary to meet these responsibilities.

International and EU Relations

17. As a matter of law, international relations and relations with the European Union remain the responsibility of the United Kingdom Government and the UK Parliament. However, the UK Government recognises that the devolved administrations will have an interest in

international and European policy making in relation to devolved matters, notably where implementing action by the devolved administrations may be required. They will have a particular interest in those many aspects of European Union business which affect devolved areas, and a significant role to play in them.

18. Arrangements for the handling of devolved administrations' interests outside the United Kingdom are set out in the international relations and EU concordats. The devolved administrations are able to develop bilateral or multilateral arrangements with other members of the British-Irish Council, including the Republic of Ireland, and to participate in the British-Irish Council itself, as set out in the Belfast Agreement. The Northern Ireland Executive Committee is also able to develop relations with the Irish Government through the North/South Ministerial Council provided for in that Agreement.

19. The UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters. This must, obviously, be subject to mutual respect for the confidentiality of those discussions and adherence to the resultant UK line, without which it would be impossible to maintain such close working relationships.

20. The devolved administrations are responsible for implementing international, ECHR and EU obligations which concern devolved matters. In law, UK Ministers have powers to intervene in order to ensure the implementation of these obligations. If the devolved

administrations wish, it is open to them to ask the UK Government to extend UK legislation to cover their EU obligations. The devolved administrations are directly accountable through the domestic courts, in the same way as the UK Government is, for shortcomings in their implementation or application of EC law. It is agreed by all four administrations that, to the extent that financial penalties are imposed on the UK as a result of any failure of implementation or enforcement, or any damages or costs arise as a result, responsibility for meeting them will be borne by the administration(s) responsible for the failure.

Non-devolved matters

21. The UK Government represents the UK interest in matters which are not devolved in Scotland, Wales or Northern Ireland. Policy responsibility for such matters lies with the relevant UK Ministers and Departments. Within the UK Government, the Secretaries of State for Scotland, Wales and Northern Ireland will continue to ensure that the interests of those parts of the UK in non-devolved matters are properly represented and considered. The devolved administrations agree to provide the UK Government with any factual information and expert opinion available to them relevant to such non-devolved matters.

The Joint Ministerial Committee

22. The UK Government and the devolved administrations believe that most contact between them should be carried out on a bilateral or multi-lateral basis, between departments which deal on a day-to-day basis with

the issues at stake. Nonetheless, some central co-ordination of the overall relationship is needed. Therefore the administrations agree to participate in a Joint Ministerial Committee (JMC) consisting of Ministers of the UK Government, Scottish Ministers, Members of the Cabinet of the National Assembly for Wales and Ministers in the Northern Ireland Executive Committee.

23. Detailed arrangements for the JMC are set out in a separate agreement. Its terms of reference are:

a. to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;

b. where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;

c. to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and

d. to consider disputes between the administrations.

24. The UK Government and the devolved administrations commit themselves, wherever possible, to conduct business through normal administrative channels, either at official or Ministerial level. The Secretaries of State for Scotland, Wales and Northern Ireland, whose functions include the promotion of good relations between the UK

Government and the respective devolved administrations, should be consulted in any significant case of disagreement.

25. Where a dispute cannot be resolved bilaterally or through the good offices of the relevant territorial Secretary of State the matter may formally be referred to the JMC Secretariat subject to the guidance on the Committee's remit in the agreement on the JMC. Where this appears likely, the JMC secretariat should be consulted at an early stage in order to ensure a consistent interpretation of the devolution settlements, and to provide advice on handling of any differences of view.

Implementation of devolution settlements

26. The devolution legislation contains various powers for the Secretary of State to intervene in devolved matters. It also contains powers for the Law Officers to refer questions of vires to the Judicial Committee of the Privy Council. Although the UK Government is prepared to use these powers if necessary, it sees them very much as a matter of last resort. The UK Government and the administration concerned will therefore aim to resolve any difficulties through discussion so as to avoid any action or omission by the devolved administration having an adverse impact on non-devolved matters. If formal intervention should become necessary, the UK Government will whenever practicable inform the devolved administration of its intentions in sufficient time to enable that administration to make any representations it wishes, or take any remedial action.

27. In order to enable the UK Government to decide whether they need to activate these procedures, the devolved administrations will notify legislative measures to the relevant UK Departments and Law Officers both when they are proposed and when they are adopted. Legislative proposals will normally have been subject to advance notification and consultation, in accordance with the general principles set out above.

Reviewing bilateral relations

28. The administrations recognise that there may be a need from time to time for some adjustment to be made to the devolution settlements, for example, in response to new issues or in the light of the operation of the settlements. The administrations agree that there should be mechanisms in place to review the operation of the settlements and for adjustments to be agreed.

29. The JMC will therefore keep the broad operation of the arrangements under review and will also look at the effectiveness of concordats and bilateral relations more generally. The JMC secretariat will also have a role in keeping the arrangements under review and providing advice on concordats both to the JMC and to the administrations.

Review of this Memorandum of Understanding