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CONCORDAT ON INTERNATIONAL RELATIONS – NORTHERN IRELAND

1. This concordat sets out how the United Kingdom Government and the Northern Ireland Executive Committee will co-operate with respect to international relations. Common arrangements between the United Kingdom Government and the three devolved administrations are set out in the attached annex. This covers:

- exchange of information;
- formulation of United Kingdom policy and conduct of international negotiations;
- implementation of international obligations;
- co-operation over legal proceedings;
- representation overseas;
- secondments and training co-operation;
- visits;
- public diplomacy, the British Council and BBC World Service;
- trade and investment promotion;
- diplomatic and consular relations.

2. The Concordat is not intended to constitute a legally enforceable contract or to create any rights or obligations that are legally enforceable. It is intended to be binding in honour only. It is underpinned by the Memorandum of Understanding between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee. It is to be read in accordance with the Northern Ireland Act 1998 ("the Act") which takes precedence. It does not cover the co-ordination of EU policy at official and Ministerial level between the United Kingdom Government and the devolved administrations. This is dealt with in a separate concordat on EU business.

3. Under the devolution settlement, the United Kingdom Government is responsible for international relations. The Secretary of State for Foreign and Commonwealth Affairs is responsible for the foreign policy of the United Kingdom, and has overall responsibility for concluding treaties and other international agreements on behalf of the United Kingdom, ensuring compliance with the United Kingdom's EU and other international obligations, conducting international litigation on behalf of the United Kingdom, nominations to international bodies, and ensuring consistency between foreign

policy and the full range of policies of the United Kingdom Government, the Northern Ireland Executive Committee, Scottish Ministers, and the National Assembly for Wales. The Foreign and Commonwealth Office (FCO) promotes the international interests of the United Kingdom and all its constituent parts. United Kingdom Embassies, High Commissions and other Missions overseas serve the United Kingdom and all its constituent parts. Heads of Mission of United Kingdom Missions overseas are responsible for the co-ordination of all the United Kingdom's official activities in the country to which they are accredited.

4. The UK Government recognises that the devolved administrations will have an interest in international policy making in relation to devolved matters. Under the Act, the Northern Ireland Executive Committee is responsible for observing and implementing the international obligations of the United Kingdom which relate to their devolved responsibilities. The FCO, and as appropriate other lead United Kingdom Departments, will provide the Northern Ireland Executive Committee with information and advice on international developments that may affect its devolved responsibilities.

5. The parties to this Concordat recognise that the conduct of international relations is likely to have implications for the devolved responsibilities of the Northern Ireland Executive Committee and that the exercise of these responsibilities is likely to have implications for international relations. This Concordat therefore reflects a mutual determination to ensure that there is close co-operation in these areas between the United Kingdom Government and the Northern Ireland Executive Committee with the objective of promoting the overseas interests of the United Kingdom and all its constituent parts.

Review and dispute resolution

6. The United Kingdom Government and the Northern Ireland Executive Committee will maintain full and detailed working-level contacts in regard to international relations. The Secretary of State for Foreign and Commonwealth Affairs and the First Minister and Deputy First Minister or their nominees will meet annually or at the request of either party to review co-operation in regard to international relations.

7. The Memorandum of Understanding sets out the procedures to be followed in the event of disputes. Issues will normally be resolved by bilateral consultations between the responsible officials. Where a dispute cannot be resolved by this means, the issue will be reported to the First Minister and Deputy First Minister and the Secretary of State for Foreign and

Commonwealth Affairs who will seek to resolve the issue within the framework of the Joint Ministerial Committee. Except in cases of genuine urgency, the statutory powers referred to in the Annex will not be exercised until after an ample opportunity has been allowed for consultation and discussion under this paragraph.

8. This Concordat will be reviewed annually.

'devolved legislature' means the Northern Ireland Assembly, the Scottish Parliament, or the National Assembly for Wales;

'devolution legislation' means the Northern Ireland Act 1998, the Scotland Act 1998, or the Government of Wales Act 1998;

'devolved administration' means the Northern Ireland Executive Committee, Scottish Ministers, or the Cabinet of the National Assembly for Wales;

'ministers of the devolved administrations' means Northern Ireland Ministers, Scottish Ministers or Welsh Assembly Secretaries;

'devolved matters' means those matters not reserved to the UK Government under the Scotland Act 1998, those matters not excepted or reserved to the UK Government under the Northern Ireland Act 1998, or those functions transferred to the Assembly under the Government of Wales Act 1998 or conferred directly on it by other legislation;

'non-devolved matters' means matters other than devolved matters.

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2. This paper sets out the common arrangements agreed between the UK Government and the three devolved administrations. It covers:

- exchange of information;
- formulation of UK policy and conduct of international negotiations;
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- public diplomacy, the British Council and BBC World Service;
- trade and investment promotion;
- diplomatic and consular relations.

CONCORDAT ON INTERNATIONAL RELATIONS: COMMON ANNEX

Definitions

1. In this document,

‘devolved legislature’ means the Northern Ireland Assembly, the Scottish Parliament, or the National Assembly for Wales;

‘devolution legislation’ means the Northern Ireland Act 1998, the Scotland Act 1998, or the Government of Wales Act 1998;

‘devolved administration’ means the Northern Ireland Executive Committee, Scottish Ministers, or the Cabinet of the National Assembly for Wales;

‘Ministers of the devolved administrations’ means Northern Ireland Ministers, Scottish Ministers or Welsh Assembly Secretaries;

‘devolved matters’ means those matters not reserved to the UK Government under the Scotland Act 1998, those matters not excepted or reserved to the UK Government under the Northern Ireland Act 1998, or those functions transferred to the Assembly under the Government of Wales Act 1998 or conferred directly on it by other legislation;

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Exchange of Information

3. The devolved administrations will need to be aware of international developments that touch on devolved matters (including non-devolved matters that impact upon devolved areas) and to take account of the implications of these developments. Therefore the FCO, and where appropriate other lead UK Departments, will provide the devolved administrations with timely, relevant and comprehensive information and analysis on international developments that may affect their responsibilities or be relevant to their interests. This will include relevant reporting from UK Missions overseas, and proposals for new UK legislation and early copies of proposed UK legislation on international relations.

4. The FCO and other lead UK Departments will need to be aware of developments in or as regards Northern Ireland, Scotland and Wales that touch on international relations (including devolved matters that impact upon international relations) and to take account of the implications of these developments. Therefore the devolved administrations will provide the FCO, and where appropriate other lead UK Departments, with timely, relevant and comprehensive information and analysis on developments in or as regards Northern Ireland, Scotland and Wales that may affect their responsibilities or be relevant to their interests. This will include information on contacts and discussions with foreign national or sub-national governments or counterparts in international organisations¹, and proposals for new legislation and early copies of proposed legislation on devolved matters.

5. Complete confidentiality is often essential in matters touching on international relations and in formulating a UK policy position. Arrangements agreed in this concordat will rely for their effectiveness on mutual respect for the confidentiality of information (including statistics) exchanged.

Formulation of UK policy and conduct of international negotiations

1. For the Northern Ireland administration, this will include information on negotiations with the Irish Government for the conclusion of international arrangements under section 53 of the Northern Ireland Act 1998 including the establishment of cross-border implementation bodies.

6. The FCO, or as appropriate another lead UK Department, will consult the devolved administrations about the formulation of the UK's position for international negotiations, to the extent that the negotiations touch on devolved matters (including non-devolved matters which impact upon devolved areas). The devolved administrations will be sent copies of papers, including relevant interdepartmental correspondence, and be invited to meetings on subjects in which they have a devolved policy interest. Where necessary, the FCO will facilitate contacts and ensure that timely consultation takes place. The UK Government alone has the power to enter into treaties or other international agreements binding on the UK in international law and will undertake the negotiation of all binding international agreements and multilateral international arrangements (e.g. the Rio Declaration), following the consultation arrangements referred to above.

7. The devolved administrations may hold working-level discussions on devolved matters with foreign national or sub-national governments or appropriate counterparts in international organisations. The devolved administrations may, in co-operation with the FCO, make arrangements or agreements with foreign national or sub-national governments or appropriate counterparts in international organisations, to facilitate co-operation between them on devolved matters, provided that such arrangements or agreements do not purport to bind the UK in international law, affect the conduct of international relations or prejudice UK interests. (It is an inherent part of the Belfast Agreement (Command Paper 3883) that, on matters within their competence, the devolved administrations may hold discussions and make arrangements with the Irish Government in the context of the British-Irish Council²). The devolved administrations will consult the FCO in advance about any contact, correspondence, or proposal that is novel or contentious, might create a contingent international liability or may have implications for international relations.

8. Where international negotiations bear directly on devolved matters, it may be appropriate for Ministers or officials from the devolved administrations to form part of a UK negotiating team. The role of Ministers or officials from the devolved administrations will be as part of a UK team to support and advance the single UK negotiating line which they will have played a part in developing. The UK lead Minister will retain

². Paragraph 10 of the British-Irish Council section of Strand 3 of the Agreement states that "it will be open to two or more members [of the British-Irish Council] to develop bilateral or multilateral arrangements between them. Such arrangement could include, subject to the agreement of the members concerned, mechanisms to enable consultation, co-operation and joint decision making on matters of mutual interest; and mechanisms to implement any joint decisions they may reach."

responsibility for the negotiations and will determine how each member of the team can best contribute to securing the agreed position. In appropriate cases, and by agreement with the FCO (or where appropriate another lead UK department) Ministers or officials from the devolved administrations could speak for the UK in international meetings.

Implementation of international commitments

9. Under the devolution legislation, the devolved administrations are responsible for observing and implementing international obligations which relate to devolved matters³. They are similarly responsible in areas where they or the UK Government have made commitments under informal instruments⁴. In common with other parts of the UK, the devolved administrations expect to observe the terms of these informal instruments which have been entered into in good faith. The FCO or other lead UK Department will formally notify the devolved administration of any new international commitment concerning devolved matters which it will be the responsibility of the devolved administration to implement (although the arrangements described in paragraphs 2-4 should ensure that the devolved administrations are already aware of new commitments). Such notification should take place as soon as the instrument has been concluded in order to allow sufficient time for the devolved legislatures to make any necessary legislation prior to ratification.

10. Under the devolution legislation, the UK Government may by subordinate legislation split a quantitative international obligation, such as a quota, and transfer part of it to the devolved administration⁵. The size of the devolved administrations' shares will be a matter for negotiation, taking into

³ It is essential that the UK Government is in a position to implement international obligations it has undertaken in good faith. The UK Government therefore has power to ensure that the devolved administrations take action to give effect to the UK's international obligations and do not take actions which would be incompatible with these obligations. Section 58 of the Scotland Act 1998, section 26 of the Northern Ireland Act 1998, and section 108 of the Government of Wales Act 1998, give the UK Government power to order that a proposed action by a devolved administration should not be taken if it would be incompatible with any international obligation of the UK or direct that action be taken to give effect to any such obligation. Under section 35 of the Scotland Act, the Secretary of State may make an order prohibiting the Presiding Officer from submitting a Bill of the Scottish Parliament for Royal Assent if he has reasonable grounds to believe that it contains provisions which would be incompatible with any international obligations of the UK. Similarly, under Section 14 of the Northern Ireland Act the Secretary of State may decide not to submit a Bill of the Northern Ireland Assembly for Royal Assent which contains a provision which he considers would be incompatible with any international obligations of the UK. The UK Government may also revoke any subordinate legislation made by a devolved legislature if it contains provisions which would be incompatible with any international obligations.

⁴ The term "informal instruments" covers international instruments which have no binding force in international law, but which evidence a political commitment by the States accepting them. It can include instruments describing themselves as "recommendation", "resolution", "declaration", "conclusions" and "charter".

⁵ Section 27 of the Northern Ireland Act 1998, section 106 of the Scotland Act 1998, and sections 106 and 108 of the Government of Wales Act 1998

account the extent of the powers of the devolved legislatures and administrations and the range of measures relating to devolved and non-devolved matters which might be taken to fulfil an obligation. The devolved administrations must be consulted before any order is made to apportion their share of such an obligation, and the UK Government has made it clear to Parliament that it would expect to use its best endeavours to reach agreement with them.

11. It will be for the devolved administration and the FCO, or other lead UK Government Department, to consider how to implement an international commitment which relates to devolved matters. Where the commitment is to be implemented separately by the devolved administration, they will consult and agree their implementation proposals with the FCO or other lead UK Government Department to ensure that any differences of approach are compatible with the need for consistency of effect and of timing, where that is appropriate. Where the commitment is to be implemented by UK legislation, the FCO or other lead UK Government Department will consult and agree their implementation proposals with the devolved administrations where these may impact on devolved matters. The devolved administrations will ensure that when necessary UK legislation making provision about devolved matters is laid before the devolved legislatures.

12. The UK Government will, under normal circumstances, not ask the UK Parliament to legislate in any area for which legislative competence has been devolved except with the agreement of the devolved legislature. But instances may arise, for reasons such as urgency, where full consultation and agreement is impractical. The UK Government intends, for example, to continue the practice of implementing UN Security Council Resolutions by means of Orders in Council under the United Nations Act 1946⁶. The Foreign Secretary will remain the responsible authority for the preparation of such orders.

Co-operation over legal proceedings

13. The FCO will continue to act as the Agent of the UK Government in responding to all applications brought against the United Kingdom under the European Convention on Human Rights including those arising from devolved matters. Where the case relates wholly or partly to implementation

⁶ Despite the general devolution of the functions of observing and implementing international obligations, powers under any Order in Council made under section 1 of the 1946 Act may be exercised concurrently in or as regards Scotland by UK Ministers.

of a devolved matter, the devolved administrations will advise the FCO on the facts and the domestic law, contribute on those issues to any instructions to counsel, take part in the UK team for any hearings etc. The competent legal authorities⁷ should also be consulted as to which counsel should be appointed. In the event of a decision against the UK, the devolved administrations will be responsible for putting in place any domestic measures necessary to implement the judgement. The UK is obliged under the Convention to implement judgements against it.

14. The FCO, in its established role in handling proceedings in which the UK is involved before the International Court of Justice or other international courts or tribunals, will consult fully with the devolved administrations where such proceedings bear upon the exercise of the devolved matters.

15. The devolved administrations will be responsible for the payment of any compensation and costs awarded against the UK by international courts or tribunals and for payment of Counsel's fees, to the extent that these arise from the failure of the devolved administration to implement or enforce an obligation or failure to meet their share of an international quota.

Representation Overseas

16. The devolved administrations may establish offices overseas within the framework of their responsibility for devolved matters (including for the provision of information on devolved matters to the public, regional governments and institutions, and promotion of trade and inward investment). They will do so in consultation with the FCO. Where appropriate such representation might form part of a UK Diplomatic or Consular Mission. The representatives of the devolved administration could then make use of the diplomatic bag, the FCO telegram and other communications systems, and be accorded diplomatic status in accordance with local customs and operational requirements. The FCO will recover the costs of the services provided in line with its practice for charging UK Government Departments. UK Embassies, High Commissions and other Missions overseas will continue to serve the interests of the UK as a whole and to co-ordinate all official activity.

⁷ The Lord Advocate in Scotland, Northern Ireland Legal Advisers, and Welsh Legal Advisers.

Secondments and training co-operation

17. The FCO and the devolved administrations will work to build effective institutional links including through reciprocal exchange and secondment of officials and co-operation on training. This should provide significant benefits to all parties, strengthen relationships and contribute towards good working arrangements; and assist the career and personal development of the personnel involved.

Visits

18. The FCO will provide appropriate support to Ministers of the devolved administrations, members of the devolved legislatures and officials travelling overseas. The FCO will recover the cost of this support as appropriate in line with its practice for charging other UK Government Departments.

19. The FCO, other UK Departments, and the devolved administrations will co-operate in arranging programmes in Northern Ireland, Scotland and Wales for official guests of the UK Government. Early consultation regarding possible visits will help to ensure the success of those visits. The FCO and, where appropriate, lead UK Departments will also continue to co-operate with the devolved administrations in arranging international meetings and Summit conferences in Northern Ireland, Scotland and Wales hosted by the Prime Minister or by other UK Ministers. The devolved administrations will keep the FCO and, where appropriate, the lead UK Department, informed of proposals for other visits and meetings in Northern Ireland, Scotland and Wales involving foreign government ministers, members of foreign regional governments, senior officials and representatives of international organisations. The Government Hospitality Fund (GHF) and the devolved administrations will co-operate in organising official entertainment in Northern Ireland, Scotland and Wales on behalf of UK Ministers. The devolved administrations may also make use of GHF services on a repayment basis.

Public diplomacy, the British Council and BBC World Service

20. The FCO will continue to promote the UK and all its constituent parts through public diplomacy overseas and will work closely on this with the

devolved administrations. FCO information products – including films, publications and the Internet site – will continue to present the diversity of England, Scotland, Wales and Northern Ireland.

21. The British Council will continue to promote the UK and all its constituent parts. The British Council will maintain operational links with the devolved administrations through its office in Belfast, Edinburgh and Cardiff and will invite two senior officials from each devolved administration to sit respectively on its advisory Northern Ireland, Scottish or Welsh Committees. The devolved administrations will also be able to use the Council's expertise for specific tasks on a contract basis.

22. The BBC World Service aims to bring benefit to the UK and all its constituent parts by broadcasting authoritative and impartial news and information. The devolved administrations are invited to maintain direct links with the BBC World Service on matters of mutual interest.

Trade and inward investment promotion

23. The devolved administrations and the UK Government have concurrent powers to promote exports. British Trade International has lead UK responsibility for the provision of support and assistance to new and existing exporters of goods and services and outward investors both at home and overseas. The devolved administrations are responsible for devising and implementing additional programmes to meet the particular needs of companies in Northern Ireland, Scotland and Wales. British Trade International, the FCO, DTI, other lead UK Government Departments and devolved administrations will consult each other on policy developments and activities to avoid duplication of effort, including double funding of activities, and to avoid contradictory actions. The devolved administrations will be represented on the Board of British Trade International.

24. The devolved administrations and the UK Government have concurrent powers to promote inward investment. The Invest in Britain Bureau (IBB) has lead responsibility for promoting the UK and its constituent parts to foreign investors. The devolved administrations are responsible for the promotion of Northern Ireland, Scotland and Wales. The IBB, the FCO, DTI, and other lead UK Government Departments and devolved administrations will consult each other on strategic policy developments and activities. Promotion of the UK to foreign investors will be co-ordinated through adherence of all concerned to guidelines agreed by the Committee

on Overseas Promotion on which the devolved administrations will be represented.

Diplomatic and consular relations

25. The FCO will continue to be responsible for policy on diplomatic and consular relations with other countries and on all matters concerning international organisations represented in the UK. The FCO will continue to be the channels for all official communications on matters relating to Foreign and Commonwealth consulates and international organisations and their staff in Northern Ireland, Scotland and Wales. The FCO will inform the devolved administrations of all career consular appointments in Northern Ireland, Scotland and Wales. The FCO will consult the devolved administrations about the establishment of new consular offices, new honorary consular appointments, and other new offices where personnel will have privileges and immunities (e.g. certain cultural centres and trade offices) in Northern Ireland, Scotland and Wales. The devolved administrations will immediately pass on to the FCO any representations made by diplomatic/consular missions and international organisations. The devolved administrations will also promptly notify the FCO of any alleged breaches within their devolved competences. The FCO will then take the appropriate action under the Vienna Conventions on Diplomatic and Consular Relations or any applicable Consular Convention or Headquarters Agreement.