

TO: EXECUTIVE COMMITTEE

MEMORANDUM OF UNDERSTANDING AND CONCORDATS

Issue

1. Concordats are the administrative agreements between the UK Government and the devolved administrations, setting out principles that should underpin working relations. The Memorandum of Understanding (MoU) sets out the basic principles under which business is to be conducted and five supplementary agreements to the MoU (the overarching concordats) deal specifically with the Joint Ministerial Committee, the handling of EU policy issues, financial assistance to industry, international relations, and statistics. These concordats are agreed multilaterally, with the MoU.
2. Bilateral concordats are agreed between individual departments of the UK Government and their devolved counterparts. The most significant of these is that between the Northern Ireland Office and the Executive Committee.
3. The Executive Committee agreed in principle the MoU and its five supplementary agreements, subject to a minor addition to the supplementary agreement on EU policy to reflect the role of the North South Ministerial Council. The Executive Committee agreed in principle, and subject to certain amendments, the NIO Concordat. Copies of these agreements as agreed or amended by the Executive Committee are **attached**. Amendments are shown in bold text
4. The First Minister and Deputy First Minister will now write to the Secretary of State, formally responding to his letter of 6 December 1999 with these proposed amendments.

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Assembly debate

5. It has previously been proposed to the Executive Committee that both the MoU / supplementary agreements and the NIO Concordat should be referred to the Assembly. If the Executive Committee agrees that this should be done, there are a number of options. The MoU and the NIO Concordat could be the subject of an inspired written question or of a statement to the Assembly, or could formally be put to the Assembly, either for endorsement or on a take note basis.
6. An inspired written question would simply place the papers on the official record. A statement to the Assembly would allow Members to question a Minister on the agreements for up to one hour. A formal motion would allow more wide-ranging debate, concluding with a vote on the proposition either to note or to endorse the agreements. Since the MoU/Concordats are agreements between the Executive Committee and the UK Government it would be sufficient for the Executive Committee to ask the Assembly to take note rather than endorse the agreements.
7. **It is recommended** that the Executive Committee should agree that the First Minister and Deputy First Minister should table a motion asking the Assembly to take note of the MoU and its supplementary agreements and the bilateral concordat between the Northern Ireland Office and the Executive Committee.

Timing

8. **It is recommended** that the debate on the MoU and concordats should be held as soon as possible, probably in the second week following restoration.

Bilateral concordats

9. Work on other bilateral concordats continues with the aim of reaching agreement at official level. In due course, these will be submitted by departments to their Ministers for agreement.
10. **It is recommended** that the Executive Committee should agree that bilateral concordats, other than that between the Executive Committee and the NIO, should be placed on the official record of the Assembly by means of an inspired written question, with a copy of the concordat placed in the Library.

Recommendations

11. The Executive Committee is invited:
 - i to agree that the First Minister and Deputy First Minister should table a motion asking the Assembly to take note of the MoU and its supplementary agreements and the bilateral concordat between the Northern Ireland Office and the Executive Committee;
 - ii to agree that the debate on the MoU and concordats should be held as soon as possible, once agreement to the proposed changes has been received, and

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- iii to agree that other bilateral concordats should be placed on the Official Record of the Assembly by means of inspired written questions, with copies of the concordats placed in the Library.

Executive Committee Secretariat

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CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY ISSUES – NORTHERN IRELAND

1. This document and the common Annex are to be read in conjunction with the Memorandum of Understanding (MOU) between the UK Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee and the enabling legislation establishing these administrations. Reference to devolved or non-devolved matters will be construed in accordance with the MOU.

2. This concordat is an agreement between the Northern Ireland Executive Committee and the UK Government. This concordat is not intended to constitute a legally enforceable contract or to create any rights or obligations which are legally enforceable. It is intended to be binding in honour only.

This Concordat sets out the mechanisms between UK Government and the Northern Ireland Executive Committee for the handling of EU business. Specifically, the Concordat covers:

- provision of information;
- formulation of UK policy;
- attendance at Council of Ministers and related meetings;
- implementation of EU obligations; and
- infraction proceedings.

There are a wide range of interfaces with the EU and the practicalities attached to developing and presenting UK policy are to be handled in line with the general principles set out in this paper. Other concordats may set out the procedure in more detail as appropriate.

General

3. As all foreign policy issues are non-devolved, relations with the European Union are the responsibility of the Parliament and Government of the United Kingdom, as Member State. However, the UK Government wishes to involve the Northern Ireland Executive Committee as directly and fully as possible in decision making on EU matters which touch on devolved areas (including non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance in Northern Ireland). In general, it is expected that consultation, the exchange of information and the conventions on notifications to EU bodies will continue in similar circumstances to the arrangements in place prior to devolution.

4. Participation will be subject to mutual respect for the confidentiality of discussions and adherence by the Northern Ireland Executive Committee to the resulting UK line without which it would be impossible to maintain such close working relationships. This line will reflect the interests of the UK as a whole. In accordance with these general principles, the co-ordination mechanisms should achieve three key objectives:

- they should provide for full and continuing involvement of Ministers and officials of the Northern Ireland administration in the processes of policy formulation, negotiation and implementation, for issues which touch on devolved matters;
- they should ensure that the UK can negotiate effectively, in pursuit of a single UK policy line, but with the flexibility that fast-moving negotiations require; and
- they should ensure EU obligations are implemented with consistency of effect and where appropriate of timing.

Such mechanisms should also ensure that the Northern Ireland Executive Committee and the UK Government inform each other of any relevant policy proposals which might impact on either existing or new EU proposals or requirements. They should also ensure that, when required by EC legislation, relevant obligations or initiatives are reported to the Commission and when necessary the other Member States.

The arrangements in the common Annex are intended to be adaptable to suit the differing circumstances of individual cases.

North/South Arrangements

5. As required by the Belfast Agreement, the North/South Ministerial Council brings together those with executive responsibilities in Northern Ireland and the Irish Government to develop consultation, co-operation and action within the island of Ireland on matters of mutual interest within the competence of the administrations. This includes consideration of the European Union dimension of relevant matters, including the implementation of EU policies and programmes. The Special EU Programmes Body has a clear operational remit as set out in the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999. This concordat applies to the Northern Ireland Executive Committee's participation in North/South arrangements. In accordance with paragraph 17 of Strand II of the Belfast Agreement, arrangements are to be made to ensure that the views of the North South Ministerial Council are taken into account and represented appropriately at relevant EU meetings.

Provision of Information

2. In order to contribute effectively to the United Kingdom's decision making on European Union (EU) matters, the devolved administrations will need to have information on relevant EU business. The UK Government will therefore provide the devolved administrations with full and comprehensive information, as early as possible, on all business within the framework of the European Union which appears likely to be of interest to the devolved administrations, including notifications of relevant meetings within the EU. This is likely to mean all initiatives within the framework of the EU which appear to touch on matters which fall within the responsibility of the devolved administrations. The same policy will be followed by the devolved administrations on such issues likely to be of interest to the UK Government.

3. These arrangements will rely for their effectiveness on mutual respect for the confidentiality of information (including statistics) exchanged. Complete confidentiality is often essential in formulating a UK negotiating position in the EU and in developing tactical responses.

CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY ISSUES – COMMON ANNEX

Definitions

1. In this document,

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

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

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

'Ministers of the devolved administrations' means Scottish Ministers, Welsh Assembly Secretaries and Northern Ireland Ministers.

Provision of Information

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3. These arrangements will rely for their effectiveness on mutual respect for the confidentiality of information (including statistics) exchanged. Complete confidentiality is often essential in formulating a UK negotiating position in the EU and in developing tactical responses.

Participation in formulation of UK Policy (including Resolution of Differences)

4. It is the Government's intention that Ministers and officials of the devolved administrations should be fully involved in discussions within the UK Government about the formulation of the UK's policy position on all issues which touch on matters which fall within the responsibility of the devolved administrations. The arrangements outlined below assume maximum co-operation on both sides, although they will also need to work effectively when such co-operation is not forthcoming.

Ministerial involvement

5. Many issues will be capable of being dealt with bilaterally between the lead Whitehall Department and the devolved administrations.

6. Even where EU issues require wider inter-departmental consultation, it may often be possible (as at present) to resolve the matter through correspondence; and the arrangements described in this document for copying papers widely to the devolved administrations will help to ensure that matters are resolved in this way wherever possible. EU business operates to an externally imposed timetable and the UK will need to determine its negotiating position in good time. Potential areas of contention will therefore be identified as early as possible, and every effort made to resolve them without escalating discussions to senior levels.

7. Where it is not possible to resolve matters bilaterally or by correspondence as described above, the Government envisage that such EU issues will be considered by the Joint Ministerial Committee in European format (paragraph 9 of the supplementary agreement on the JMC), which will bring together UK Ministers and Ministers of the devolved administrations to discuss non-devolved matters which touch on matters which fall within the responsibility of the devolved administrations, and where appropriate the treatment of matters falling within the responsibility of the devolved administrations in different parts of the UK. In the case of EU matters, the JMC will be the forum for seeking to resolve differences between the UK Government and the devolved administrations. The procedure to be followed for handling EU business within the JMC is laid down in the supplementary agreement on the JMC.

8. In the case of implementation of European Community (EC) obligations, the wider provisions for resolution of vires disputes through reference to the Judicial Committee of the Privy Council will apply, with the UK Parliament and UK Ministers retaining the power, as provided under the devolution legislation, to legislate to implement EC obligations throughout the UK.

Official Involvement

9. In line with paragraphs 2 and 3 above, lead Whitehall departments and UKRep (within its normal reporting responsibilities) will inform officials of the devolved administrations of developments in EU business which touch on matters which fall within the responsibility of the devolved administrations. Such information will be shared both with the devolved administrations and with other interested Government Departments from the outset. Officials of the devolved administrations will have access to relevant papers (including telegrams) which are copied inter-departmentally by UKRep and lead Whitehall departments.

10. The EU official sub-committee of the JMC will provide an important forum for discussing EU issues. In addition, informal communications and meetings at official level will continue to make a major contribution to the resolution of EU issues. Officials of the devolved administrations will be included in these contacts.

11. Clearly, the nature of consultation procedures in individual cases will depend on the nature of the issue, on previous practice and on the degree of urgency. Depending on the circumstances, issues might be dealt with bilaterally between the lead Whitehall department and the devolved administrations without the need for wider inter-departmental consultation. In cases where wider inter-departmental consultation is necessary, individual Departments could choose to consult bilaterally with their opposite numbers in the devolved administrations on a particular subject, before consulting more widely on the basis of an agreed approach. In other cases, they could include the devolved administrations from the outset in a multi-lateral consultation process.

Attendance at Council of Ministers and related meetings

12. Ministers and officials of the devolved administrations should have a role to play in relevant Council meetings, and other negotiations with EU partners.

13. Decisions on Ministerial attendance at Council meetings will be taken on a case-by-case basis by the lead UK Minister. In reaching decisions on the composition of the UK team, the lead Minister will take into account that the devolved administrations should have a role to play in meetings of the Council of Ministers at which substantive discussion is expected of matters likely to have a significant impact on their devolved responsibilities.

14. Policy does not remain static in negotiations and continuing involvement is a necessary extension of involvement in formulating the UK's initial policy position. The role of Ministers and officials from the devolved administrations will be to support and advance the single UK negotiating line which they will have played a part in developing. The emphasis in negotiations has to be on working as a UK team; and the UK lead Minister will retain overall responsibility for the negotiations and determine how each member of the team can best contribute to securing the agreed policy position. In appropriate cases, the leader of the delegation could agree to Ministers from the devolved administrations speaking for the UK in Council, and that they would do so with the full weight of the UK behind them, because the policy positions advanced will have been agreed among the UK interests.

15. Attendance by officials of the devolved administrations at EU meetings will continue, as at present, to be agreed bilaterally with the lead Whitehall Department. Such agreement would also cover attendance at Presidency and Commission chaired meetings, including those discussing implementation matters. The role of officials from the devolved administrations will be to support and advance the single UK negotiating line which they will have played a part in developing.

Implementation of European Union Obligations

16. It will be the responsibility of the lead Whitehall Department formally to notify the devolved administrations at official level of any new EU obligation which concerns devolved matters and which it will be the responsibility of the devolved administrations to implement in

Scotland, Wales or Northern Ireland (although the arrangements for policy formulation and negotiation described above should ensure that the devolved administrations are already aware of new obligations). In addition, Whitehall Departments will, as necessary, liaise closely with the devolved administrations about the implementation by UK legislation of obligations in non-devolved areas, particularly where these could touch on areas which fall within the responsibility of the devolved administrations.

17. For matters falling within the responsibility of the devolved administrations, it is for the devolved administrations to consider, in bilateral consultation with the lead Whitehall Department, and other Departments and devolved administrations if appropriate, how the obligation should be implemented and administratively enforced (if appropriate) within the required timescale, including whether the devolved administrations should implement separately, or opt for GB or UK legislation. Where a devolved administration opts to implement separately, it will have a responsibility to consult the lead Whitehall Department bilaterally, and other Departments as necessary, on its implementation proposals, to ensure that any differences of approach nonetheless produce consistency of effect and, where appropriate, of timing. The same official and Ministerial mechanisms as for policy formulation will operate where wider inter-Departmental discussion is necessary.

18. Following the consultation referred to in paragraph 17, notification to the European Commission of such separate implementation should be sent through UKRep, involving the lead Whitehall Department as necessary, and copying to them in any event. In cases where there is a need for a consolidated UK communication to the European Commission, this should be co-ordinated by the lead Whitehall Department and copied to the devolved administrations, but without prejudice to the devolved administrations' responsibility for implementation. Areas which require such co-ordination may be specified in the relevant bilateral concordats.

19. Where EU legislation provides, in relation to matters falling within the responsibility of the devolved administrations, for the possibility of local measures or derogations within Member States, subject to Commission approval, and where such legislation is being implemented separately in Scotland, Wales or Northern Ireland, the relevant devolved administrations will first consult the lead Whitehall department on

whether there are wider UK policy implications. Whitehall departments will also inform the devolved administrations of any similar plans they might have. If, following such consultation, a devolved administration wishes to proceed with such local measures, the request for approval will be routed through UKRep, involving the lead Whitehall Department as necessary, and copying to them in any event.

20. Under the devolution legislation, UK Ministers may split a quantitative EC obligation on the UK, such as a quota, to facilitate the transfer of part of it to the Scottish Ministers, Northern Ireland Ministers or departments and the National Assembly for Wales. The devolved shares can be enforced as a devolution issue on the same basis as any other function of the Ministers of the devolved administrations to observe and implement a Community obligation. The size of the devolved share should be equitable, taking into account the extent of the powers of the devolved legislatures and executives and the possibility that the range of measures which can be taken to fulfil an obligation could lie across both non-devolved and devolved areas. UK Ministers will consult the devolved administrations before any order is made to apportion the devolved share of such an obligation, and the UK Government has made it clear to Parliament that it would do its best to reach agreement with them.

Enforcement of European Union Obligations

21. Where they have devolved responsibilities for the enforcement of EC obligations, the devolved administrations will co-operate fully with the relevant lead Whitehall Department. The devolved administrations and lead Whitehall Department will, in such cases, consult and inform each other of their chosen methods of enforcement of Community and other EU instruments. They will also consult with each other on any enforcement difficulties before they are discussed with the European Commission, and on any corrective action demanded by the Commission.

Infraction Proceedings

22. Where the European Commission instigates informal or formal proceedings against the UK for alleged breaches of EC law, the Cabinet Office will commission and co-ordinate the UK response, which will be sent by UKRep on behalf of the UK Government.

23. Where a case relates solely to implementation in Scotland, Wales, or Northern Ireland in relation to a matter falling within the responsibility of a devolved administration, the draft reply will be prepared by the appropriate devolved administration and agreed at official, and where necessary Ministerial, level with interested Whitehall departments. It will be submitted through UKRep in the normal way as outlined in Paragraph 19. Where a case partly concerns implementation of a devolved matter in England and one or more of the devolved regions, the lead Whitehall department will prepare the draft reply in bilateral consultation, at official or Ministerial level as appropriate, with the relevant devolved administrations. Such a procedure will also be followed where a case concerns implementation in Scotland, Wales or Northern Ireland in relation to a non-devolved matter.

24. Where a case partly or wholly involving implementation by a devolved administration is referred to the European Court of Justice, the devolved administration will contribute to the preparation of the UK's submissions to the Court. The devolved administration would take the lead in doing so for cases wholly concerned with implementation in relation to a matter falling within its responsibility, agreed as appropriate with the relevant Whitehall departments. The Cabinet Office and the Treasury Solicitors Department will co-ordinate the UK's submissions to the Court.

25. To the extent that financial costs and penalties imposed on the UK arise from the failure of implementation or enforcement by a devolved administration on a matter falling within its responsibility, or from the failure of a devolved administration to meet its share of an EC quota or obligation, responsibility for meeting these will be borne by the devolved administration. These provisions are without prejudice to the continuing operation of standing arrangements in respect of EU programmes funded as Annually Managed Expenditure (AME).

Representation in Brussels and Links with European Union Institutions

26. The status and functions of the UK Permanent Representation in Brussels as the institution representing the United Kingdom within the European Union will continue unchanged.

27. The devolved administrations will be able to take part in the less formal discussions with the institutions of the EU and interests within

other Member States. Subject to paragraph 26 above, the devolved administrations may choose to establish an office in Brussels, to assist direct relationships with other regional governments and with the institutions of the European Communities, so far as this serves the exercise of their powers and the performance of their functions as laid down in the devolution legislation and so far as it is consistent with the responsibility of the UK Government for relations with the EU. If such an office is established, it will work closely with, and in a manner complementary to, UKRep which remains responsible for representing the view of the United Kingdom to the European Institutions, and will respect the responsibility of the UK Government for non-devolved areas, including overall responsibility for relations with the EU. Both UKRep and any office of the devolved administrations will develop working procedures which reflect the need to balance the interests of all parts of the UK.

28. Staff of the devolved administrations will continue to be eligible for secondment to UKRep and to the institutions of the EU.

Nominations of Representatives

29. The devolved administrations will be responsible for nominating their established share of representatives within the Committee of the Regions and the Economic and Social Committee. Such nominations will then be forwarded to the FCO. The final decision on proposals for UK appointments will continue to be made formally by the Foreign Secretary, with the agreement of the Prime Minister, after co-ordination by the FCO and Cabinet Office.

30. The devolved administrations will be consulted by the UK Government on appointments to other European Institutions where appropriate.

Scrutiny of EU Legislation

31. The devolved legislatures may wish to set up a procedure to allow them to scrutinise EU issues relating to devolved matters to ensure its interests are properly reflected.

32. The lead Whitehall Department will liaise as necessary with the devolved administrations in the preparation of Explanatory Memoranda relating to such matters, and will keep them informed. The UK Department will send the finalised Explanatory Memorandum to the devolved administrations at the same time that it is submitted to the UK Parliament.

33. Officials of the devolved administrations will pass on to their Whitehall counterparts the views of the devolved legislatures as soon as these are known. Where timing allows, the UK Government undertakes to take account of these views in formulating the UK's negotiating position, which will continue to balance the interests of all parts of the UK.