

## **Devolution**

# **Memorandum of Understanding and Supplementary Agreements**

Between the United Kingdom Government, the Scottish  
Ministers, the Welsh Ministers, and the Northern Ireland  
Executive Committee

Presented to Parliament by Command of Her Majesty  
and presented to the Scottish Parliament and the  
Northern Ireland Assembly and laid before the National  
Assembly for Wales.

October 2013

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## **Explanatory Note**

This paper, superseding Command Paper Cm5240 published in December 2001, comprises a series of agreements between the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland setting out the principles which underlie relations between them. It is not intended that these agreements should be legally binding.

The principal agreement is the Memorandum of Understanding (MoU). It provides for a Joint Ministerial Committee (JMC), which is the subject of a separate agreement covered in Part II of the MoU. In addition to the JMC agreement, three separate overarching Concordats apply broadly uniform arrangements across Government to the handling of: the co-ordination of EU policy and implementation; financial assistance to industry; and international relations touching on the responsibilities of the devolved administrations.

Individual UK Government Departments and their counterparts in the devolved administrations have also agreed and published bilateral concordats.

Ministerial responsibility within the UK Government for the MoU and JMC agreements lies with the Deputy Prime Minister who has been given overall responsibility for the JMC by the Prime Minister. The Deputy Prime Minister also has specific responsibility for chairing the JMC in Domestic format. The Foreign and Commonwealth Secretary is responsible for the Concordats on the Coordination of European Union Policy Issues and on International Relations, and is also responsible for chairing the JMC in European format. The Secretary of State for Business, Innovation and Skills is responsible for the Concordat on Financial Assistance to Industry. The Secretaries of State for Scotland, Wales and Northern Ireland also have responsibilities within the UK Government for promoting the devolution settlement, for ensuring effective working relations between the Government and the devolved administrations, and for helping to resolve any disputes which may arise.

The First Minister of Scotland, the First Minister of Wales, and the First Minister and deputy First Minister of Northern Ireland have overall responsibility within their respective Administrations for the MoU and its associated overarching concordats. They participate as necessary in the work of the JMC, in particular in helping to resolve any disputes which may arise between the devolved administrations and the UK Government.

## **PART I: MEMORANDUM OF UNDERSTANDING**

### **Introduction**

1. This Memorandum sets out the understanding of, on the one hand, the United Kingdom Government, and on the other, the Scottish Ministers, the Welsh Ministers, 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 Ireland<sup>1</sup>. 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. Nothing in this Memorandum should be construed as conflicting with the Belfast Agreement.<sup>2</sup>

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; and international relations touching on the responsibilities of the devolved

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<sup>1</sup> The devolution legislation – that is the Acts of Parliament dealing with devolution: the Scotland Act 1998 and 2012, the Government of Wales Acts 1998 and 2006, 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 to the Scotland Act or transferred to the Scottish Ministers under other legislation; in the Welsh context, any function exercisable by the Welsh Ministers, or any matter within the legislative competence of the National Assembly for Wales; and in the Northern Ireland context any matter which is not an excepted or reserved matter under Schedules 2 and 3 to the Northern Ireland Act. ‘Non-devolved’ means anything else.

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

administrations. Recent legislation establishing new arrangements for statistical work across the UK means the former concordat on that subject is no longer necessary (see paragraph 10-11 for more details). 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.

5. Against this background, and in confidence where necessary (see paragraph 6 below), the administrations will seek:

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

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

7. The devolution legislation (see footnote 1 for definition) 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**

8. 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.

9. 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**

10. 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. 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.

11. The administrations recognise that co-operation is necessary to meet their respective policy and business objectives and their collective responsibility to deliver official statistics to the required standard. Each has a contribution to make to the provision of statistical advice and information in relation to both devolved and reserved matters, and to the production of coherent statistics about the UK whilst recognising that the priorities and objectives of the administrations may not always be identical. They have a common interest in promoting the integrity of official statistics and adherence to high professional standards. Specific arrangements for co-operation among the UK Government and devolved administrations on official statistics will be contained principally within an inter-administration agreement made between the National Statistician and the Chief Statisticians in each of the devolved administrations, and also in other bilateral agreements between UK Government departments and the devolved administrations.

## **Confidentiality**

12. 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:

- it is for the administration providing the information to state what, if any, restrictions there should be upon its usage;
- unless legally prohibited from doing so, each administration will treat information which it receives in accordance with the restrictions which are specified as to its usage;
- the administration that is in receipt of the information may be subject to a legal obligation to disclose information in certain circumstances. For example, where it receives a request under access to information legislation (primarily the Freedom of Information Act 2000 / Freedom of Information (Scotland) Act 2002 and Data Protection Act 1998). In cases where it is proposed to release information the originator may be consulted about the appropriateness of disclosing information and no information will be disclosed, where disclosure is likely to affect the originator's interests, without first consulting the originator. The final decision as to whether there is a legal obligation to disclose the information will rest with the administration that is in receipt of the information; and
- some information will be subject to statutory or other restrictions. This may mean that administrations place restrictions on the category of persons who may have access to some material. This will assist administrations in complying with their legal obligations. For example ensuring that the Official Secrets Act 1989 and the Data Protection Act 1998 are not breached. There will also be a common approach to the classification and handling of sensitive material.

## **Correspondence**

13. 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 access to information legislation.

## **Parliamentary Business**

14. 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.

15. 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.

16. 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.

17. 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**

18. 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.

19. 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.

20. 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.

21. The devolved administrations are responsible for observing and implementing international, European Court of Human Rights and European Union 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**

22. 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**

23. 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 UK Government, Scottish, Welsh and Northern Ireland Ministers.

24. Detailed arrangements for the JMC are set out in Supplementary Agreement A. Its terms of reference are:

- to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- 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;
- to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- to consider disputes between the administrations.

25. 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.

26. 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 broader principles and arrangements for dispute avoidance and resolution set out at Section A:3 of this Memorandum of Understanding.

### **Implementation of devolution settlements**

27. 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 UK Supreme Court. 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.

28. 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**

29. 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.

30. The JMC and its supporting functional and official committees 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**

31. This document will be reviewed by representatives of the administrations at a meeting of the JMC at least annually and updated as necessary.

## **PART II: SUPPLEMENTARY AGREEMENTS**

### **A1: THE JOINT MINISTERIAL COMMITTEE**

A1.1 The UK Government and the three devolved administrations have agreed to participate in a Joint Ministerial Committee (JMC) consisting of UK Government, Scottish, Welsh and Northern Ireland Ministers. This supplementary agreement sets out the basis on which the Committee will operate, pursuant to the Memorandum of Understanding.

A1.2 The terms of reference of the Joint Ministerial Committee 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.

A1.3 Plenary meetings of the JMC will be held at least once a year. They will consist of the Prime Minister (or his representative), who will take the chair, the Scottish and Welsh First Ministers, each together with one of their Ministerial colleagues, the Northern Ireland First Minister and deputy First Minister, and the Secretaries of State for Scotland, Wales and Northern Ireland. Other Ministers will be invited to attend as appropriate when issues relevant to their areas of responsibility are to be discussed.

A1.4 The Joint Ministerial Committee may also meet in other “functional” formats: for example, JMC Europe (JMC(E)) or JMC Domestic (JMC(D)). The Secretaries of State for Scotland, Wales and Northern Ireland will be invited to participate in these meetings as appropriate. Irrespective of their location, the meetings will be chaired by the responsible UK Minister.

A1.5 The JMC will also be available to try to resolve differences between the UK Government and one of the devolved administrations on a matter which does not affect the other administrations. In such a case, a Committee will be composed of appropriate Ministers from the UK

Government and the devolved administration concerned under the chairmanship of an appropriate senior UK Minister.

A1.6 Meetings of the JMC, in its various guises, will be held for three purposes: to take stock of relations generally and of the way in which the devolution arrangements are working in a particular area; to discuss policy development where policy responsibility straddles both devolved and non-devolved matters; and to address particular issues or problems. In the latter case, the presumption is that an issue will come to the JMC only when there is an impasse: i.e. following an unsuccessful bilateral exchange at Ministerial level (see section A3 for more details on the mechanics/principles for managing dispute resolution).

A1.7 Where a dispute cannot be resolved bilaterally, or through the offices of the relevant territorial Secretary of State, the matter may formally be referred to the JMC Secretariat by any one administration. Each bilateral concordat will include a reference to the process for triggering formal JMC intervention. 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.

A1.8 Meetings of the JMC, in the appropriate functional guise, will be held at the request of the UK Government or any of the devolved administrations. The responsibility for convening a meeting lies with the responsible UK Minister and this will be done within one month of the referral being received, or another period by agreement.

A1.9 The JMC - chaired for this purpose by the Foreign Secretary (or his representative) - will also operate as one of the principal mechanisms for consultation on UK positions on EU issues which affect devolved matters. The fact that rapid decisions have to be taken on EU issues to meet the timetable of negotiations in the Council of Ministers, as well as the Government's own wish to involve the devolved administrations as fully as possible in discussions on the formulation of UK policy positions, necessitates a mechanism which enables the lead UK Minister where necessary to consult other UK Government Ministers and their counterparts in the devolved administrations simultaneously. In this functional format, it is likely that the majority of business will be conducted through correspondence, although meetings will also be convened where necessary.

A1.10 The JMC is a consultative body rather than an executive body, and so will reach agreements rather than decisions. It may not bind any of the participating administrations, which will be free to determine their own policies while taking account of JMC discussions. Nonetheless, the

expectation is that participating administrations will support positions that the JMC has agreed.

### **Confidentiality and Public Statements**

A1.11 The proceedings of each meeting of the JMC will be regarded as confidential by the participants, in order to permit free and candid discussion. However, the holding of JMC meetings may be made known publicly, and there may be occasions on which the Committee will wish to issue a public statement on the outcome of its discussions. A communiqué to be agreed between the participating ministers will usually be issued following each JMC plenary.

### **Committee of officials**

A1.12 A Committee of officials from the UK Government and the devolved administrations will shadow the Joint Ministerial Committee and prepare for its meetings. It will consist of at least one representative from each administration, and, as appropriate, a representative of the Secretaries of State for Scotland, Wales and Northern Ireland. Representatives of other Whitehall Departments will be invited to attend as appropriate when issues relevant to their areas of responsibility are to be discussed. The chairman of the Committee will be the Cabinet Secretary (or his representative) and the JMC Secretariat will provide secretarial facilities.

A1.13 Meetings will be regarded as confidential by the participants. The official Committee may establish other “functional” formats to deal with individual subject areas. In particular, an official committee for EU business will consider EU issues. The same principles of membership, chairmanship and secretarial support and confidentiality will apply to these committees as to the principal official committee.

### **Joint Secretariat**

A1.14 The JMC Secretariat will comprise staff from the UK Cabinet Office and the devolved administrations. Its composition and role is described in the attached Annex (A2).

## **A2: Annex on the Secretariat to the JMC**

A2.1 The Joint Secretariat will comprise staff from the UK Cabinet Office and the devolved administrations. The lead role within the Secretariat will fall upon the UK Cabinet Office, including responsibility for servicing meetings and despatching documents as required. However, in accordance with the traditional role of the Cabinet Office, although it will retain a certain responsibility to the Prime Minister as chairman of the JMC, the Secretariat will be bound to provide an impartial service to all members of the JMC. It will remain possible for staff of the devolved administrations to be seconded to work in this as in other areas of the Cabinet Office.

A2.2 The functions of the Joint Secretariat will depend upon the needs of the moment, but the Secretariat will be a resource which is available for:

- a. servicing meetings of the JMC and its official counterpart;
- b. general liaison, including ensuring that the exchange of information between administrations is adequate (this should not be taken as superseding normal bilateral contacts);
- c. preparing a forward look of issues likely to require discussion by the JMC;
- d. maintaining an overview of the workings of the devolution arrangements, including concordats and the resolution of disputes arising from them;
- e. where necessary, ensuring liaison between the UK Government and the devolved administrations on issues cutting across conventional departmental boundaries, for example social exclusion, and the prevention of drug misuse;
- f. reviewing constitutional issues of importance to all four administrations, such as guidelines for officials of one administration preparing to give evidence before the legislature of a different administration; and
- g. helping to resolve bilateral problems, including vices disputes.

A2.3 The presumption is that in most circumstances the administrations will arrange bilateral meetings without the need to involve the JMC Secretariat, which will become involved only if circumstances require it e.g. in the event of an unresolved dispute. Meetings of the JMC in functional format may, by agreement, be serviced by the lead Whitehall Department.

A2.4 The Joint Secretariat will also liaise as necessary with the Secretariat to the British-Irish Council established pursuant to the Belfast Agreement<sup>3</sup>.

A2.5 It is recognised that the staff of the UK Government and the devolved administrations who make up the component sections of the Joint Secretariat are likely also to be involved in co-ordinating their own administrations' stance towards JMC business. The UK Government and the devolved administrations recognise that there will sometimes come a point in discussions between the administrations at which the different parties will need to reserve their position or, especially when legal proceedings seem likely, cease to participate in joint discussion of an issue.

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<sup>3</sup> The British-Irish Council comprises representatives of the British and Irish Governments, the Northern Ireland Executive, the Scottish Ministers, the Welsh Ministers, the Government of the Isle of Man, the Bailiwick of Guernsey and the Bailiwick of Jersey (and, if appropriate in due course, elsewhere in the UK). It promotes discussion, consultation and co-operation on matters of mutual interest between the participating administrations. The Secretariat is provided jointly by the British and Irish Governments in co-ordination with officials from the other member administrations.



### **A3. DISPUTE AVOIDANCE AND RESOLUTION**

A3.1 This agreement, between the UK Government and the devolved administrations, outlines procedures for avoiding and resolving disputes between administrations consistent with the general principles set out in the Memorandum of Understanding. In particular it builds on (but does not replace) the terms of reference of the Joint Ministerial Committee, which include ‘to consider disputes between the administrations’, as set out in paragraph 23 of the MoU; paragraphs 24 and 25; paragraphs A1.5 and A1.7 of the Supplementary agreement on the JMC; and paragraphs 12.1 and 12.2 of the UK Government’s Statement of Funding Policy. A number of concordats include procedures on avoiding and resolving differences, and this agreement supplements but does not replace them. Like the MoU itself this agreement is a statement of intent, creating no legal obligations between the parties, and binding in honour only.

A3.2 In order to reduce to the minimum the potential for disputes to arise, the parties recommit themselves to the principles of good communication and cooperation set out in the Memorandum of Understanding.

#### **Invocation of procedures in this agreement**

A3.3 The parties undertake to follow these procedures in good faith and in a timely manner in order to resolve differences that occur in the operation of the current arrangements. (The procedures are not intended to deal with differences over possible change to the overall statutory framework governing devolution). When differences arise it is the obligation of all those involved to make determined efforts to resolve them, in accordance with the principles of the MoU, including those relating to confidentiality.

A3.4 There may be circumstances, particularly those arising from differences in political outlook, where the UK Government and one or more of the devolved administrations are unlikely to be able to agree. In these cases the parties to this agreement recognise that the JMC machinery is unlikely to offer any prospect of resolution. They also recognise, consistently with the principle that the JMC is not a decision-making body, that the basis on which the procedures will operate is the facilitation of agreement between the parties in dispute, not the imposition of any solution.

A3.5 There may at times be disputes between administrations on the interpretation of legal provisions relating to devolution. Without prejudice to the powers to place these before the courts, the administrations will generally seek first to resolve them in line with this protocol.

### **Resolution of differences at working level**

A3.6 All efforts should be made to resolve differences informally and at working level if possible. Where this fails, the issue should be brought to the attention of more senior officials, including, if other steps are unsuccessful, members of the JMC officials' framework i.e. JMC(O) or senior officials supporting the JMC(D) or JMC(E) as appropriate. All should fully commit themselves to achieving agreement if possible. If no agreement is reached at official level, Ministers should make every effort to resolve the problem without the need formally to invoke the JMC process. These steps should proceed in a timely manner.

A3.7 The MoU recognises the key responsibility of the relevant territorial Secretary of State for promoting effective working relations and helping resolve disputes [paragraph 24, A1.7]. The relevant territorial Secretary of State or his/ her officials should always be made aware of any dispute that threatens to be incapable of informal resolution, and involved in relevant discussions. Where discussions involving the parties do not achieve agreement, the relevant territorial Secretary of State or officials may by agreement convene further talks between the parties at ministerial or official level.

A3.8 The Statement of Funding Policy sets out the UK Government's rules for resolving financial issues. Before the JMC process set out in the Statement of Funding Policy is invoked for differences about financial issues including the interpretation of the Statement of Funding Policy, these should generally be first discussed bilaterally between the Treasury and the relevant devolved administrations or if appropriate at a timely Finance Quadrilateral meeting bringing together Treasury ministers and finance ministers of the devolved administrations.

### **References to JMC Secretariat**

A3.9 Where the preceding steps have not resolved a difference, any of the parties may formally refer it to the JMC secretariat, so that steps can be taken to resolve it through the JMC process. A difference so referred is known as a disagreement.

A3.10 When it is notified of a disagreement, the Secretariat will normally convene a meeting of officials from the administrations involved (including representatives of the relevant territorial Secretaries of State).

Through this process, the Secretariat will seek agreement on the facts, provide an opportunity for the parties to set out their positions and facilitate discussion of shared interests, options for resolving the disagreement and criteria for an agreed outcome. It will also inform the other administrations. This will be done within one month of the referral being received, or another period by agreement. Where a meeting of JMC (Official) is due to take place it may also consider the issue and involve officials from the policy area concerned.

A3.11 The outcome of this meeting will be one of: a proposal put to the relevant Ministers for their agreement; a report to the relevant Ministers seeking their agreement for a further round of the process at official level; agreement that a request should be made for an independent third party report in terms of paragraphs 3.11a-c, or, exceptionally, a referral to the JMC. A disagreement so referred is known as a dispute.

A3.11a With the agreement of the parties to the disagreement, the senior official chairing the meeting of officials may commission independent analysis of the issues relating to the disagreement by an agreed third party. This may be done in advance of or at the official-level meeting. Any party to the dispute may request such a piece of independent analysis although all parties must agree on the terms of reference for this analysis before it can be taken forward.

A3.11b In the event that independent analysis is commissioned, the third party, with the support of the Secretariat, should consider the issues in line with the agreed terms of reference and provide a written report to the Chair and the parties to the disagreement setting out his or her analysis. The parties must decide, with facilitation from the Chair, whether to follow the advice or recommendations contained in that report although any such advice or recommendation is not binding on the parties to the dispute.

A3.11c Where a further meeting of officials is convened to consider the independent report, the outcome of that meeting will be one of: a proposal put to the relevant Ministers for their agreement; a report to the relevant Ministers seeking their agreement for a further round of the process at official level; or, exceptionally, any of the parties to an unresolved disagreement may refer it to the JMC as a dispute.

### **JMC meetings to deal with disputes**

A3.12 Where a dispute has been referred to JMC, the Secretariat will schedule a meeting in accordance with paragraph A1.5 of the Agreement on the JMC to consider the dispute. This will be done within one month of the referral being received, or another period by agreement.

Attendance would include ministers from the UK departments and the devolved administrations involved in the dispute, along with the relevant territorial Secretaries of State or their representatives. The senior UK Minister chairing will as far as possible be someone without a direct departmental interest in the issue in dispute. The meeting might take place on the same date as a regular JMC meeting but would be separate from that meeting.

A3.13 With the support of the Secretariat, the Minister chairing will provide a further opportunity for the parties to set out their positions and will facilitate discussion of shared interests, options for resolving the dispute and criteria for an agreed outcome. The Minister chairing may in advance of the meeting wish to make informal efforts to resolve matters.

A3.14 The outcome of this meeting will be one of: an agreement resolving the dispute; agreement to a further round of the process at Ministerial level; an agreement that a request should be made for an independent third party report in terms of paragraphs A3.14a-c; agreement that no resolution can be reached; or, exceptionally, a request by any party that the dispute be considered by a JMC Plenary meeting.

A3.14a With the agreement of the parties to the dispute, the Minister chairing the dispute-resolution meeting may commission independent analysis of the issues relating to the dispute by an agreed third party. This may be done in advance of, or at, the Ministerial meeting. Any party to the dispute may request such a piece of independent analysis although all parties must agree on the terms of reference for such an analysis before it can be taken forward.

A3.14b In the event that independent analysis is commissioned, the third party, with the support of the Secretariat, should consider the issues in line with the agreed terms of reference and provide a written report to the Chair and the parties to the dispute setting out his or her analysis. The parties must decide, with facilitation from the Chair, whether to follow the advice or recommendations although any such advice or recommendation is not binding on any of the parties to the dispute.

A3.14c Where a further meeting is convened to consider the independent report, the outcome will be one of the following options: an agreement resolving the dispute; an agreement to a further round of the process at Ministerial level; agreement that no resolution can be reached; or, exceptionally, a request by any party that the dispute be considered by a JMC Plenary meeting.

A3.14d If no additional Ministerial meeting or Plenary meeting is requested, the chair of the Ministerial dispute meeting will write to the

parties within three months of the most recent meeting (or by another date by agreement) to ask whether they regard the process as ended.

A3.14e The consideration of a dispute by a JMC Plenary meeting is final, and there are no further stages within the dispute resolution process, unless a Plenary meeting decides to remit consideration of the dispute back to a further round of the Ministerial-level discussions described at paragraph A3.12.

A3.15 The Secretariat will provide for JMC Plenary at least annually a record of disagreements and disputes and the outcome or current stage each has reached.

A3.16 Where a disagreement or dispute has been resolved or is close to resolution, parties to the disagreement or dispute should attempt to agree a plan for handling any media announcement of the resolution.

A3.17 In the spirit of continuous improvement, the four administrations will review, and seek to agree, further development of the approach to the avoidance and resolution of disputes set out above

## **B: CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY ISSUES**

### **B1: Concordat on Co-ordination of European Union Policy Issues – Scotland**

B1.1 This document and the common Annex (B4) are to be read in conjunction with the Memorandum of Understanding (MoU) between the UK Government, the Scottish Ministers, the Welsh Ministers 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.

B1.2 This concordat is an agreement between the Scottish Ministers 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.

B1.3 This Concordat sets out the mechanisms between UK Government and the Scottish Ministers for the handling of EU business. Specifically, the Concordat covers:

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

B1.4 The UK engages with the EU in many different fora 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**

B1.5 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 Scottish Ministers 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 Scotland). 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.

B1.6 Participation will be subject to mutual respect for the confidentiality of discussions and adherence by the Scottish Ministers 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 Scottish Ministers and their officials 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.

B1.7 Such mechanisms should also ensure that the Scottish Ministers 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.

B1.8 The arrangements in the common Annex (B4) are intended to be adaptable to suit the differing circumstances of individual cases.

## **B: CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY ISSUES**

### **B2: Concordat on Co-ordination of European Union Policy Issues - Wales**

B2.1 This document and the common Annex (B4) are to be read in conjunction with the Memorandum of Understanding (MoU) between the UK Government, Scottish Ministers, the Welsh Ministers 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.

B2.2 This concordat is an agreement between the Welsh Ministers 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.

B2.3 This Concordat sets out the mechanisms between UK Government and the Welsh Ministers for the handling of EU business. Specifically, the Concordat covers:

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

B2.4 The UK engages with the EU in many different fora and the practicalities attached to developing and presenting UK policy are to be handled in line with the general principles set out in this document. Other concordats may set out the procedure in more detail as appropriate.

#### **General**

B2.5 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 Welsh Ministers 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 to Wales). 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.

B2.6 Participation will be subject to mutual respect for the confidentiality of discussions and adherence by the Welsh Ministers 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 the Welsh Ministers and their officials 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.

B2.7 Such mechanisms should also ensure that the Welsh Ministers 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.

B2.8 The arrangements in the common Annex (B4) are intended to be adaptable to suit the differing circumstances of individual cases.

## **B: CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY ISSUES**

### **B3: Concordat on Co-ordination of European Union Policy Issues – Northern Ireland**

B3.1 This document and the common Annex (B4) are to be read in conjunction with the Memorandum of Understanding (MoU) between the UK Government, Scottish Ministers, the Welsh Ministers 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.

B3.2 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.

B3.3 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 and representation at Council of Ministers and related meetings;
- implementation of EU obligations; and
- infraction proceedings.

B3.4 The UK engages with the EU in many different fora 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**

B3.5 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.

B3.6 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 coordination mechanisms should achieve three key objectives:

- they should provide for full and continuing involvement of Northern Ireland Ministers and their officials 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.

B3.7 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.

B3.8 The arrangements in the common Annex (B4) are intended to be adaptable to suit the differing circumstances of individual cases.

### **North/South Arrangements**

B3.9 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.

## **B: CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY**

### **B4: Co-ordination of European Policy Issues: Common Annex**

#### **Provision of Information**

B4.1 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 including proposals for Treaty change. 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.

B4.2 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)**

B4.3 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. To facilitate clarity and understanding on the point when a Whitehall policy position evolves into a UK Government negotiating line, consistent with the Government representing the United Kingdom as a Member State of the European Union, consultation with Devolved Administrations includes the upstream opportunities to influence EU proposals in the period before they emerge as well as the period after formal proposals are made and includes the period before approval is sought for a UK line from the European Affairs Committee.

B4.4 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**

B4.5 Many issues will be capable of being dealt with bilaterally between the lead Whitehall Department and the devolved administrations.

B4.6 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.

B4.7 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 A1.9 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.

B4.8 The JMC meeting in this format has also adopted the following practices:

- Meetings will be held in advance of each scheduled European Council meeting and may be held more regularly;
- The JMC Secretariat will endeavour to circulate at the outset of each year a forward timetable with suggested dates and agenda items for JMC(E) meetings with a view to ensuring that meetings are held on dates and at times on which Ministers from all administrations are able to attend;
- Officials will meet around ten working days in advance of each JMC(E) to ensure in particular that the Devolved Administrations have an active role in agreeing the JMC(E) agenda and discussing draft papers;
- JMC(E) meetings will be supported by high quality discussion papers normally introduced by the lead UK Minister. JMC(E) papers will be circulated at least 48 hours in advance in line with normal Cabinet Committee arrangements although drafts will be circulated to devolved administrations further in advance whenever possible;
- The JMC(E) will consider the UK's early influencing priorities based on a list provided by the Foreign Secretary and following publication of the European Commission's annual Work Programme.
- All administrations will be given the opportunity to clarify points in the minutes of JMC(E), meetings at Ministerial or official level in relation to their own interventions before the minutes are circulated more widely; and
- Meetings of JMC(E) either at Ministerial or official level may take place on occasion in Belfast, Cardiff or Edinburgh.

B4.9 In the case of implementation of EU obligations, the wider provisions for resolution of vires disputes through reference to the Supreme Court will apply, with the UK Parliament and UK Ministers retaining the power, as provided under the devolution legislation, to legislate to implement EU obligations throughout the UK.

### **Official Involvement**

B4.10 In line with paragraphs B4.2 and B4.3 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, including non-devolved matters which might impact on areas for which Devolved Ministers have competence. 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.

B4.11 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.

B4.12 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 and representation at Council of Ministers and related meetings**

B4.13 Ministers and officials of the devolved administrations have a legitimate interest in the preparation and presentation of the UK's EU policy where it touches on matters which fall within their responsibility and therefore have a role to play in relevant Council meetings, and other negotiations with EU partners.

B4.14 Decisions on Ministerial attendance and representation at Council meetings will be taken on a case-by-case basis by the lead UK Minister, recalling that the Memorandum of Understanding recognises the importance of cooperation across a range of areas and the importance of all four administrations working together, where appropriate, on matters of mutual interest.



B4.14a 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. Requests by the Ministers of Devolved Administrations to attend Council of Ministers should be welcomed unless there is a compelling reason not to do so and which the lead Minister should be willing to explain.

B4.15 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. Recalling that the Memorandum of Understanding recognises that it may be appropriate for all four administrations to undertake activities on each other's behalf, the leader of the delegation could, in appropriate cases, agree to Ministers from the devolved administrations speaking for the UK in Council. Where appropriate and when more than one Minister from a devolved administration wishes to represent the UK, this will be agreed on a case-by-case basis by the devolved administrations and, if agreement is not reached in good time, be finally determined by the lead UK Minister. Any Ministers representing the UK would then do so with the full weight of the UK behind them, because the policy positions advanced will have been agreed among the UK interests.

B4.16 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**

B4.17 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.

B4.18 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.

B4.19 Following the consultation referred to in paragraph B4.17, 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.

B4.20 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.

B4.21 Under the devolution legislation, UK Ministers may split a quantitative EU 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 Welsh Ministers. The devolved shares can be enforced as a devolution issue on the same basis as any other function of observing and implementing an EU 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**

B4.22 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 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**

B4.23 Where the European Commission instigates informal or formal proceedings against the UK for alleged breaches of EU law, the Cabinet Office will commission and co-ordinate the UK response, which will be sent by UKRep on behalf of the UK Government.

B4.24 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 B4.19. 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.

B4.25 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.

B4.26 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). Where financial costs and penalties are imposed on the UK, under powers conferred by Part 2 of the Localism Act 2011, Ministers of the Crown may, by order, designate certain public authorities in the UK (including in the Devolved Administrations) considered to have caused or contributed to the

infraction, in relation to non-devolved functions of a public nature. This would be for the purpose of recovering some or all of the cost from the public authority. Section 49 of the Act requires Ministers to issue, and have regard to, a policy statement relating to their use of these powers and this policy statement will contain further information of relevance to Devolved Administrations. Section 55 of the Act requires Ministers to have regard to the need to avoid any prejudicial effect on the performance by a mixed function authority of its devolved functions. The Minister would also consult the devolved administration as and when is appropriate.

### **Representation in Brussels and Links with European Union Institutions**

B4.27 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.

B4.28 The devolved administrations are able to take part in the less formal discussions with the institutions of the EU and interests within other Member States. Subject to paragraph B4.26 above, the devolved administrations are able, and have chosen to establish an office in Brussels, to assist direct relationships, including with other regional governments and with the institutions of the European Union, 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. The Devolved Administration EU offices (DA EUOs) are part of UKRep organisational structure and their UK-based staff are permanent UK civil servants issued with British diplomatic passports. As part of the diplomatic representation of the UK they are subject to the authority of the Permanent Representative in respect of the usual issues of personal conduct. On this basis, the UK-based staff of the devolved administrations' EU Offices, have diplomatic status, and are notified to the Belgian authorities by the Permanent Representation accordingly. Both UKRep and the DA EU offices will develop working procedures which reflect the need to balance the interests of all parts of the UK.

B4.29 Staff of the devolved administrations will continue to be eligible for secondment to UKRep and to the institutions of the EU.

### **Nominations of Representatives**

B4.30 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.

B4.31 The devolved administrations will be consulted by the UK Government on appointments to other European Institutions where appropriate.

### **Scrutiny of EU Legislation**

B4.32 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.

B4.33 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.

B4.34 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.

## **C: CONCORDAT ON FINANCIAL ASSISTANCE TO INDUSTRY**

### **Introduction**

C1 The White Papers “Scotland’s Parliament” and “A Voice for Wales” said that financial assistance to industry would be devolved to the Scottish Parliament and National Assembly for Wales, subject to common UK guidelines and consultation arrangements to be set out in a published concordat. Similarly, the Northern Ireland Act 1998 provides that executive and legislative authority for transferred matters, including financial assistance to industry, is devolved to the Northern Ireland Assembly.

C2 The arrangements set out in this Concordat are consistent with the devolution of responsibility from the United Kingdom Government to the devolved administrations. They will work on the basis of transparency, trust and consensus; and will balance the aims of fairness and value for money with the need to negotiate flexibly and effectively.

C3 In drawing up this Concordat, particular account has been taken of the financial assistance offered to inward investors. Building on existing practice, there will continue to be an arrangement covered by the Concordat, providing for consultation and agreement between interested parties where two or more parts of the UK are in competition for a major investment.

C4 This Concordat does not create any legal relations between the signatories nor any legal right to be consulted.

### **Legislation**

C5 There will be mutual consultation between all parties to this Concordat, in adequate detail and to a reasonable timescale, on any proposals for new legislative provision (whether primary or secondary legislation) for financial assistance to industry.

### **Consultation on particular cases**

C6 There will be mutual consultation, between the interested parties in each particular case, in adequate detail and to a reasonable timescale, before making offers (formal or indicative) of financial assistance to cases within the following categories:

- large mobile investments where there is an interest in more than one constituent part of the UK;

- where it is proposed to breach agreed financial limits envisaged in paragraph C14; and
- involving relocation from one part of the UK to another.

### **Ministerial Group**

C7 It is anticipated that for the most part the implementation of the arrangements set out in this Concordat will be undertaken at official level. If necessary, however, the arrangements may be overseen by representatives of the United Kingdom Government and the devolved administrations, in a Group whose members will be:

- Ministers from the Department for Transport; the Treasury; the Department for Business, Innovation and Skills; and the Foreign and Commonwealth Office;
- Ministers representing each of the devolved administrations.

C8 Its terms of reference will be:

- to facilitate the exchange of information on financial assistance between the United Kingdom Government and the devolved administrations; and
- to allow consensus to be reached on the level of assistance to be offered to those large mobile investment projects for which two or more parts of the UK are in competition.

C9 There will be an official group to support the Ministerial Group. It will be established under Cabinet Office chairmanship, and will report annually to Ministers on the operation of the Concordat.

### **Independent Evaluation**

C10 There will be continuing periodic independent evaluation of major programmes of financial assistance to industry on the model of previous evaluations of Regional Selective Assistance (RSA).

### **Guidelines**

C11 All parties to the Concordat have equivalent aid schemes based on the HMT Green Book and State aid rules. All parties to this Concordat commit to mutual consultation in adequate detail and to a reasonable timescale where any party proposes to change its policy and practice.

### **Inward Investment**



C12 The UK Government will continue to be responsible for promotion of the UK as a whole to foreign investors. Promotion of the UK and its constituent parts to foreign investors will be co-ordinated through the adherence of all concerned to guidelines agreed by the International Business Development Forum, on which the devolved administrations will be represented along with UK Trade & Investment.

C13 Where inward investment functions are carried out by publicly funded bodies, or private sector companies acting on their behalf, the UK Government or devolved institution sponsoring the body concerned will, as now, ensure that it follows the agreed guidance on the handling of inward investment negotiations. Consultation on those large mobile cases for which two or more parts of the UK are in competition will be co-ordinated by officials in the administrations concerned except in those cases in which the involvement of the Ministerial Group is necessary. In the latter cases the secretariat to the Ministerial Group, overseen by the official forum referred to above, will co-ordinate the consultation. The secretariat will have no direct contact with potential investors which will negotiate primarily with the relevant national bodies.

### **Financial Limits**

C14 Where there is only one UK location being considered for a project the financial limits are governed by EU State Aid rules. Where a potential investor is considering two or more locations in the UK the Concordat requires that the administrations involved will agree the appropriate level of financial support, subject always to compliance with State Aid rules.

### **Relations with the European Union**

C15 Financial assistance to industry is an area which is subject to EU State Aid rules. In particular, the EU has certain powers under Articles 107 and 108 of the Treaty on the Functioning of the European Union. As regards relations with the European Union, Ministers and officials of the devolved administrations will be fully involved in discussions within the UK Government about the formulation of the UK's policy position on all issues which touch on financial assistance to industry. This will require mutual respect for the confidentiality of those discussions and adherence to the resultant UK line. All parties to the Concordat are covered and will abide by EU rules on state aid.

C16 The UK Government commits itself to adequate consultation to a reasonable timescale with the devolved administrations on its dealings with the European Commission (and other European Union institutions as appropriate) on State Aids policy. By the same token, the devolved administrations undertake to maintain adequate consultation to a

reasonable timescale with the UK Government on any measure which may require notification, and to respond within a reasonable timescale to enquiries received from the UK Government on actual or potential State aid measures or on consultation about new policy developments.

C17 The designation of assisted areas, including related domestic legislation, is a reserved function and will remain the responsibility of the UK Government. There will, however, be adequate consultation to a reasonable timescale by the UK Government with the devolved administrations on the methodology and detail of any proposed revisions to the assisted areas map prior to putting proposals to the European Commission.

### **Consultation and Dispute Resolution**

C18 Where there is a need for consultation or where disputes arise between the UK Government and the devolved administrations on the matters covered by this Concordat, the majority of matters should be capable of being handled routinely among officials of the Departments in question. Where it proves impossible to reach a consensus between officials disputes, except those to which paragraphs C7-C9 apply, will be resolved via the mechanisms outlined in agreement A3 of this Memorandum of Understanding.

## **D: CONCORDAT ON INTERNATIONAL RELATIONS**

### **D1: Concordat on International Relations - Scotland**

D1.1 This concordat sets out how the United Kingdom Government and Scottish Ministers will co-operate with respect to international relations. Common arrangements between the United Kingdom Government and the devolved administrations are set out in the attached Annex (D4). 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; and
  - diplomatic and consular relations.

D1.2 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 Welsh Ministers and the Northern Ireland Executive Committee. It is to be read in accordance with the Scotland 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.

D1.3 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, Northern Ireland Executive Committee,

Scottish Ministers, and the Welsh Ministers. 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.

D1.4 The UK Government recognises that the devolved administrations will have an interest in international policy making in relation to devolved matters and also in obligations touching on devolved matters that the UK may agree as a result of concluding international agreements (including UN Conventions). Under the Act Scottish Ministers are responsible for observing and implementing the international obligations of the United Kingdom which relate to its functions. The FCO, and as appropriate other lead United Kingdom Departments, will provide the Scottish Ministers with information and advice on international developments that may affect its functions. The UK Government will invite the Scottish Ministers to contribute to reports to international organisations regarding the UK's compliance with international obligations which touch on devolved matters and will consider Scottish representation when international organisations discuss such reports.

D1.5 The parties to this Concordat recognise that the conduct of international relations is likely to have implications for the devolved responsibilities of Scottish Ministers 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 Scottish Ministers with the objective of promoting the overseas interests of the United Kingdom and all its constituent parts.

### **Review and dispute resolution**

D1.6 The United Kingdom Government and Scottish Ministers 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 or their nominees will meet annually or at the request of either party to review co-operation in regard to international relations.

D1.7 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 solved by this means, the issue will be reported to the 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 (D4) will not be exercised until after an ample opportunity has been allowed for consultation and discussion under this paragraph.

D1.8 This Concordat will be reviewed annually.

## **D: CONCORDAT ON INTERNATIONAL RELATIONS**

### **D2: Concordat on International Relations - Wales**

D2.1 This concordat sets out how the United Kingdom Government and the Welsh Ministers will cooperate with respect to international relations. Common arrangements between the United Kingdom Government and the devolved administrations are set out in the attached Annex (D4). 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; and
- diplomatic and consular relations.

D2.2 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 Welsh Ministers and the Northern Ireland Executive Committee. It is to be read in accordance with the Government of Wales Acts 1998 and 2006 (“the Acts”) 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.

D2.3 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, Northern Ireland Executive Committee, Scottish Ministers, and the Welsh Ministers. 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.

D2.4 The UK Government recognises that the devolved administrations will have an interest in international policy making in relation to devolved matters and also in obligations touching on devolved matters that the UK may agree as a result of concluding international agreements (including UN Conventions). Under the Acts, the Welsh Ministers are responsible for observing and implementing the international obligations of the United Kingdom which relate to its functions. The FCO, and as appropriate other lead United Kingdom Departments, will provide the Welsh Ministers with information and advice on international developments that may affect its functions. The UK Government will invite the Welsh Ministers to contribute to reports to international organisations regarding the UK's compliance with international obligations which touch on devolved matters and will consider Welsh representation when international organisations discuss such reports.

D2.5 The parties to this Concordat recognise that the conduct of international relations is likely to have implications for functions of the Welsh Ministers and that the exercise of their functions 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 Welsh Ministers with the objective of promoting the overseas interests of the United Kingdom and all its constituent parts.

### **Review and dispute resolution**

D2.6 The United Kingdom Government and the Welsh Ministers 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 or their nominees will meet annually or at the request of either party to review co-operation in regard to international relations.

D2.7 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 solved by this means, the issue will be reported to the 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 (D4) will not be exercised until after an ample opportunity has been allowed for consultation and discussion under this paragraph.

D2.8 This Concordat will be reviewed annually.



## **D: CONCORDAT ON INTERNATIONAL RELATIONS**

### **D3: CONCORDAT ON INTERNATIONAL RELATIONS – NORTHERN IRELAND**

D3.1 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 devolved administrations are set out in the attached annex (D4). 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; and
  - diplomatic and consular relations.

D3.2 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 Welsh Ministers 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.

D3.3 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 Welsh Ministers. 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.

D3.4 The UK Government recognises that the devolved administrations will have an interest in international policy making in relation to devolved matters and also in obligations touching on devolved matters that the UK may agree as a result of concluding international agreements (including UN Conventions). Under the Act Northern Ireland Ministers are responsible for observing and implementing the international obligations of the United Kingdom which relate to its functions. The FCO, and as appropriate other lead United Kingdom Departments, will provide Northern Ireland Ministers with information and advice on international developments that may affect its functions. The UK Government will invite Northern Ireland Ministers to contribute to reports to international organisations regarding the UK's compliance with international obligations which touch on devolved matters and will consider Northern Ireland representation when international organisations discuss such reports.

D3.5 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**

D3.6 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.

D3.7 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 (D4) will not be exercised until after an ample opportunity has been allowed for consultation and discussion under this paragraph.

D3.8 This Concordat will be reviewed annually.

## **D: CONCORDAT ON INTERNATIONAL RELATIONS**

### **D4: Concordat on International Relations: Common Annex**

#### **Introduction**

D4.1 This paper sets out the common arrangements agreed between the UK Government and the devolved administrations. It covers:

- exchange of information;
- formulation of UK 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; and
- diplomatic and consular relations.

#### **Exchange of Information**

D4.2 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.

D4.3 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 organisations<sup>4</sup>, and proposals for new legislation and early copies of proposed legislation on devolved matters.

D4.4 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**

D4.5 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.

D4.6 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

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<sup>4</sup> 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.

or agreements with foreign national or sub-national governments or appropriate counterparts in international organisations, to facilitate cooperation 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 Council<sup>5</sup>). 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.

D4.7 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 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.

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<sup>5</sup> 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”.

## **Implementation of international commitments**

D4.8 Under the devolution legislation, the devolved administrations are responsible for observing and implementing international obligations which relate to devolved matters<sup>6</sup>. They are similarly responsible in areas where they or the UK Government have made commitments under informal instruments<sup>7</sup>. 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.

D4.9 Under the devolution legislation, the UK Government may by subordinate legislation split a quantitative international obligation, such

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<sup>6</sup> 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 82 of the Government of Wales Act 2006, 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. Section 101 and 114 of the Government of Wales Act 2006 permit the Secretary of State by order to prohibit the Clerk of the National Assembly for Wales from submitting a proposed Assembly Measure for approval by Her Majesty in Council, or submitting an Assembly Bill for Royal Assent, if it contains provisions that he has reasonable grounds to believe would be incompatible with any international obligation. 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.

<sup>7</sup> 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".

as a quota, and transfer part of it to the devolved administration<sup>8</sup>. The size of the devolved administrations' shares will be a matter for negotiation, taking into 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.

D4.10 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.

D4.11 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 1946<sup>9</sup>. The Foreign Secretary will remain the responsible authority for the preparation of such orders.

### **Co-operation over legal proceedings**

D4.12 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

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<sup>8</sup> Section 27 of the Northern Ireland Act 1998, section 106 of the Scotland Act 1998, and sections 80 and 82 of the Government of Wales Act 2006.

<sup>9</sup> 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.



arising from devolved matters. Where the case relates wholly or partly to implementation 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 authorities<sup>10</sup> 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.

D4.13 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.

D4.14 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**

D4.15 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.

### **Secondments and training co-operation**

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<sup>10</sup> The Lord Advocate in Scotland, Northern Ireland Legal Advisers, and the Counsel General to the Welsh Assembly Government.

D4.16 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**

D4.17 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.

D4.18 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 section of the Foreign and Commonwealth Office 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 section's services on a repayment basis.

### **Public diplomacy, the British Council and BBC World Service**

D4.19 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.

D4.20 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.

D4.21 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**

D4.22 The devolved administrations and the UK Government have concurrent powers to promote international trade and inward investment. UK Trade & Investment 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 and for promoting the UK and all its constituent parts to foreign investors. The devolved administrations are responsible for devising and implementing additional programmes to meet the particular needs of companies in Northern Ireland, Scotland and Wales and for promoting Northern Ireland, Scotland and Wales to foreign investors. UK Trade & Investment, the FCO, BIS, 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 International Business Development Forum, along side UK Trade & Investment and the Regional Development Agencies. Promotion of the UK to foreign investors will be co-ordinated through adherence of all concerned to guidelines agreed by the International Business Development Forum.

### **Diplomatic and consular relations**

D4.23 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 competence. 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.