

CONFIDENTIAL

10 DOWNING STREET

THIS FILE MUST NOT GO OUTSIDE 10 DOWNING ST

FILE TITLE:

REFORM

SERIES

CONSTITUTION

PART:

15

PART BEGINS:

20
16 OCTOBER 1999

PART ENDS:

6 JANUARY 2000

CAB ONE:

LABOUR ADMINISTRATION

Part

done

PREM49/1/93

CONFIDENTIAL

PART
CLOSED

DATE CLOSED	6 JANUARY 2000
--------------------	----------------

Series : CONSTITUTION

File Title : Reform

Part : 15

Date	From	To	Subject	Class	Secret
20/10/1999	SS/DSS	LP	Government response to the procedure committee's report on devolu	R	0
21/10/1999	LP	SS/DSS	Government response to the procedure committee's report on devolu	U	0
28/10/1999	LPO	NIO	Northern Ireland devolution: appointed day order	C	0
31/10/1999	M/MAFF	LP	Government response to the procedure committee's report on devolu	C	0
12/11/1999	FCO	SO	Devolution: UK International Obligations	U	0
22/11/1999	SS/DTI	First Min/Scot Asse	Bilateral concordat	R	0
22/11/1999	SOC	PM	Devolution: Public Appointments	C	0
23/11/1999	First Min/Scot Assem	SS/DTI	Bilateral Concordat Between the Department of Trade and Industry a	U	0
24/11/1999	SO	LC	Devolution in Scotland: future legislation at westminster	C	0
25/11/1999	MS/DETR	MS/DfEE	Scottish devolution - repeal of s28/2a of the local government act 19	C	0
26/11/1999	CH/EX	PM	Joint Action: Working with the Devolved Administrations on Child Po	U	0
29/11/1999	Cab Off	SOC	Joint Action with Devolved Administrations	C	0
29/11/1999	EA/PS	PS/SOC	Devolution: Public Appointments	C	0
30/11/1999	HMT	PPS	Joint action with devolved administrations	R	0
01/12/1999	PM	CH/EX	(PM) Joint Action with Devolved Administrations	U	0
02/12/1999	DPM	PM	Joint Action with Devolved Administrations	C	0
03/12/1999	CH/EX	First Min/Scot Asse	Jiont Ministerial Committeess	U	0
06/12/1999	SS/NIO	NI/Assembly	Devolution : Memorandum of Understanding and overarching Concor	U	0
07/12/1999	First Min/NAW	CH/EX	Joint Ministerial Committees	U	0
15/12/1999	DETR	Cab Off	Draft DETR?National Assembly for Wales Concordat (Memorandum	R	0
15/12/1999	Cab Off	SOC	Government Announcements and the Devolved Administrations	U	0
17/12/1999	PPS	DETR	Joint Action with Devolved Administrations	U	0
17/12/1999	PS/SOC	PPS	Joint Action with the Devolved Administrations	U	0
06/01/2000	LC	LP	Attendance of UK Ministers and Officials at devolved legislatures	U	0

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

F



Top-OB
cc POCF
ES
PU
~~ES~~ ~~FE~~

HOUSE OF LORDS,
LONDON SW1A 0PW

The Rt Hon Margaret Beckett MP
President of the Council and Leader
of the House of Commons
Privy Council Office
2 Carlton Gardens
LONDON SW1 5AH

6 January 2000

Dear Margaret,

ATTENDANCE OF UK MINISTERS AND OFFICIALS AT DEVOLVED LEGISLATURES

I am writing to seek colleagues' agreement to the attached Devolution Guidance Note covering the handling of invitations which colleagues and their officials may receive to give evidence to committees of the devolved legislatures. Unless colleagues have commented by 28 January, the note will be placed in the public domain.

Officials have been in discussion about the handling of such invitations. The attached draft has been agreed within Whitehall and endorsed by the Scottish and Welsh administrations. It offers a pragmatic approach to the handling of requests for evidence from the devolved legislatures which nonetheless underlines the primacy of the duty owed by UK Government Ministers to the UK Parliament.

In accordance with the *Code of Practice on Access to Government Information*, the Devolution Guidance Notes are publicly available. I propose to treat the attached note in a similar fashion.

Yours ever,

Berry

-the Prime Minister

A copy of this letter goes to members of DP, and Sir Richard Wilson.

DEVOLUTION GUIDANCE NOTE

ATTENDANCE OF UK MINISTERS AND OFFICIALS AT COMMITTEES OF THE DEVOLVED LEGISLATURES

Introduction

This note provides guidance to UK Ministers and civil servants on how to deal with invitations to attend Committees of devolved legislatures. It does not provide guidance on the giving of evidence to these Committees. If such guidance is required, in addition to that which is already available for giving evidence to Westminster Committees, it will be provided once it has become clearer how the Committees in the devolved legislatures will wish to operate.

2. It is open to any of the UK legislatures (the UK Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly) to invite Ministers (or Secretaries) and civil servants from the UK Government or the devolved administrations to attend and to give evidence to a Committee. This guidance note covers only the situation where a Minister or civil servant of the UK Government has received such an invitation from one of the devolved legislatures. **The Constitution Secretariat in the Cabinet Office (0171 270 5914) should be notified of all such invitations.**

Invitations to Ministers

3. The devolution legislation has created powers **to require by law** the attendance of individuals at a particular Committee meeting. There are rare circumstances in which a UK Minister might be so required to attend a committee of the Scottish Parliament. It is not expected that these circumstances will arise very often and in most cases a Minister will be invited to attend (as they are invited to Westminster Select Committees). In all cases, therefore, the invitation will fall into one of two categories: (a) the Minister is **required** to attend and give evidence; (b) the Minister is **invited (ie not required)** to attend and give evidence. The difference in respect of the three devolved legislatures is set out in the respective legislation as follows: section 23 of the *Scotland Act 1998*; section 74 of the *Government of Wales Act 1998* and section 44 of the *Northern Ireland Act 1998*. It may not

always be easy to determine the exact legal position in any particular case and legal advice may be required on interpretation. Annex A gives an outline of the legal position but in all cases of doubt legal advice should be sought.

4. While UK Ministers' over-riding responsibility is to the Parliament at Westminster, any request for a Minister to attend a Committee of a devolved legislature should be treated with as much care and courtesy as an invitation to attend a Commons or Lords Select Committee. If the assessment of the legal position is that a Minister could be **required** to attend a meeting then sending a representative will not usually be acceptable and every endeavour should be made to attend when and as required by the devolved legislature.

5. If Ministers are invited to attend in circumstances where they cannot be required to do so then it is a matter for them as to whether they attend or not. It is expected that over time a pattern of response to such invitations will build up among UK Government Ministers. Initially Ministers will wish to consider each case on its merits taking into account the following considerations:

- (i) Ministers' primary duty of accountability is to the UK Parliament, which retains sole authority for non-devolved matters;
- (ii) the relationship between the Minister's responsibilities and the subject of the devolved legislature's enquiry (ie how closely linked are the issues? are there ramifications within devolved areas of UK Ministerial decisions?);
- (iii) whether the Minister or another UK Government representative has recently attended to give evidence on the same or a closely related topic;
- (iv) whether there are particular aspects of the issue which weigh in favour of attendance (eg providing an opportunity for the UK Government to explain its policies or position; a high level of media interest in the devolved area or a specific case which has acquired a high profile);

- (v) whether the devolved legislature might acquire the information by some other means (evidence may have recently been given to a Westminster Select Committee on the subject or if it is seeking mainly factual material might a memorandum be provided, at least in the first instance);
- (vi) the effect on the Minister's other duties and other calls on his time.

6. In some cases, where attendance is invited, it may be appropriate for a junior Minister or a senior official to attend even when a Cabinet Minister has been invited. Indeed, in many cases it may be more useful to a Committee for someone other than the original invitee to attend. For instance, some senior officials with geographical responsibility in Scotland or Wales for a reserved matter may be particularly well placed to provide information to a Committee of a devolved legislature. Alternatively, Ministers may prefer to submit a written statement.

Invitations to Civil Servants

7. All civil servants working for the UK Government who receive an invitation to give evidence to a Committee of a devolved legislature (in their capacity as a civil servant) should seek the agreement of the relevant UK Government Minister before accepting or declining the invitation. All civil servants will appear before the Committees on behalf of Ministers. Depending on the nature of the subject at issue it may be necessary to seek more explicit instructions from Ministers on the giving of evidence.

8. As with attendance by UK Ministers it will be important to establish the legal position regarding attendance (see paragraph 3 above and annex A). The considerations on attendance when it is invited (but **not required**) will be similar to those for Ministers as set out in paragraph 5 above. It will be for UK Ministers to decide whether they wish their officials to attend. However invitations to officials to give evidence on politically sensitive issues should be treated with particular caution.

9. Committees of the devolved legislatures may also ask members of non-departmental public bodies to attend hearings. In such cases discussion between the NDPB and the

relevant sponsor department will be needed to determine the response to the invitation and the approach to giving evidence. However, NDPBs are free to express their independent views, subject to any statutory or contractual responsibilities and security constraints.

General

10. If an invitation has been accepted (either by a UK Minister or a civil servant) and the subject is one which is currently under consideration by a Westminster Select Committee then that Committee should be informed through the Departmental Select Committee Liaison Officer. Irrespective of the current concerns of Westminster Select Committees it may prove to be good practice to inform them of approaches from devolved institutions.

11. On all occasions, and whatever the intention as regards attendance, Ministers and their officials should deal with devolved Committees with the same courtesy, respect and promptness as they would use in dealing with Westminster Select Committees. The Government wishes the devolved arrangements in Scotland, Wales and Northern Ireland to operate effectively within the new constitutional frameworks that have been provided. Behaving in the proper way towards the devolved legislatures' Committees will be one way of achieving this aim.

Constitution Secretariat
Cabinet Office
December 1999

ANNEX A

Invitations from Committees of Devolved Legislatures: the legal position

This note is an outline of the legal position as regards the acceptance of invitations from Committees of the devolved legislatures. It is not comprehensive, particularly with regard to the Scottish Parliament, and in all cases of doubt legal advice should be sought.

The Scottish Parliament

2. The powers of the Scottish Parliament to call for witnesses and documents are in section 23 of the *Scotland Act 1998*. The general power permits the Scottish Parliament to require persons to attend and give evidence concerning any subject for which the Scottish Executive has "general responsibility". "General responsibility" is undefined and potentially covers a very large number of subjects, including, functions transferred under or by virtue of section 53 (general transfer of functions to Scottish Ministers), section 63 (executive devolution) and section 89 (cross border bodies). It should be noted that the power is exercisable in relation to subjects and not merely in relation to functions. In addition, it should be noted that a member of the Scottish Executive has general responsibility only in or as regards Scotland.

3. However, the power is then qualified in a number of ways. Most importantly, in the current context, Ministers and officials cannot be required to attend in relation to the exercise of their functions if they are functions which can also be exercised by Scottish Ministers (ie concurrent functions) or are exercisable only after obtaining the agreement of or after consultation with Scottish Ministers (subsection 4). The result appears to be that where the Scottish Ministers have some influence over the exercise of functions UK Ministers and officials cannot be required to attend in relation to those functions - thus maintaining an appropriate division of accountability. However, the limitation on functions exercised with agreement or after consultation is limited to reserved matters (subsection 5). So for a devolved subject where a Minister exercises functions with the agreement of or after consultation with Scottish Ministers then a requirement to attend may be imposed. Taking all the above into account, the power of the Scottish Parliament to summon Ministers appears to be quite limited.

4. In some cases the other qualifications of the general power may be relevant. For example, witnesses cannot be required to answer questions or produce documents which they would be able to refuse to answer or to produce in court proceedings in Scotland (subsection 9).

5. Section 25 establishes that failure to comply with the requirements of the Scottish Parliament constitutes a criminal offence.

The National Assembly for Wales

6. The powers of the National Assembly for Wales to call for witnesses and documents are in section 74 of the *Government of Wales Act 1998*. The powers are limited to bodies specified in Schedules 4 and 5 of the Act. UK Ministers and their departments are not included in those schedules and Ministers and officials cannot therefore be required to attend. A number of public bodies (some UK-wide) are, however, included. The Secretary of State can amend Schedule 5 so the position may change. Failure to comply is again a criminal offence (subsection 75(2)).

The Northern Ireland Assembly

7. The powers of the Northern Ireland Assembly to call for witnesses and documents are in section 44 of the *Northern Ireland Act 1998*. The matters on which witnesses may be required to attend and give evidence or on which documents may be required are potentially very wide. The matters are transferred matters and other matters in relation to which statutory functions are exercisable by Northern Ireland Ministers or departments (subsection 2). UK Ministers or officials outside Northern Ireland can only be summoned in connection with the discharge of functions relating to matters falling within subsection (2). A further important exclusion from the requirement is the discharge of functions by Ministers and officials prior to the appointed day – ie in advance of devolution to Northern Ireland taking place (subsection 4). Failure to comply is again a criminal offence (section 45).



10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

17 December 1999

Dear Peter,

JOINT ACTION WITH DEVOLVED ADMINISTRATIONS

The Prime Minister was grateful for the Deputy Prime Minister's minute of 2 December about these arrangements.

The Prime Minister would not want a very large number of UK Ministers to attend these meetings, which of course do not have any decision-taking power. Nor, of course, are they the only forum for liaison with the devolved administrations on matters of common interest, such as social exclusion. But the Prime Minister would certainly want to ensure that any papers from the meetings of the JMC were fully circulated to all the relevant UK Departments, whether or not they were members of the Committee.

As you know, there was a preliminary meeting with the devolved administrations earlier this month to look at the setting up of a Joint Ministerial Committee on Poverty. The formal terms of reference, membership and work programme are now to be considered. The Prime Minister thinks that a final decision on the UK Ministers who should be members should be taken in the light of this work. He would be sympathetic to Hilary Armstrong's membership if, as seems likely, social exclusion figures prominently in the work programme.

I am copying this minute to Tom Scholar (HM Treasury), Debora Matthews (Lord Chancellor's Office), Mike Wardle (Department for Education and Employment), Rod Clark (Department of Social Security), Antony Philipson (Department of Trade and Industry), Jayne Colquhoun (Scotland Office), Simon Morris (Welsh Office), Nick Perry (Northern Ireland Office), Gaynor Jeffrey (Patricia Hewitt's office, DTI) and Sebastian Wood (Cabinet Office).

Tom,

JEREMY HEYWOOD

Peter Unwin Esq
Department for the Environment, Transport and the Regions.



Secretary of the Cabinet and Head of the Home Civil Service

From the Private Secretary

JEREMY HEYWOOD

~~CC: LS~~
JP
RNF

JOINT ACTION WITH THE DEVOLVED ADMINISTRATIONS

I minuted you on 9 December with a draft reply to the Deputy Prime Minister's minute of 2 December on membership of the Joint Ministerial Committees with the devolved administrations. You asked for an updated draft. This is attached.

2. As before the thrust of the advice is that Hilary Armstrong's membership of this committee should be addressed when the terms of reference and membership are determined. The general principle is that we do not want these committees getting too large and unwieldy.

3. As this is about the UK Government's representation, I suggest you do not copy your reply to the devolved administrations.

SEBASTIAN WOOD

17 December 1999

GR

DRAFT LETTER TO PETER UNWIN, DETR

JOINT ACTION WITH DEVOLVED ADMINSTRATIONS

The Prime Minister was grateful for the Deputy Prime Minister's minute of 2 December about these arrangements.

The Prime Minister would not want a very large number of UK Ministers to attend these meetings, which of course do not have any decision-taking power. Nor, of course, are they the only forum for liaison with the devolved administrations on matters of common interest, such as social exclusion. But the Prime Minister would certainly want to ensure that any papers from the meetings of the JMC were fully circulated to all the relevant UK Departments, whether or not they were members of the Committee.

As you know

~~The Prime Minister understands that~~ there was a preliminary meeting with the devolved administrations earlier this month to look at the setting up of a Joint Ministerial Committee on Poverty, ~~and that~~ the formal terms of reference, membership and work programme are now to be considered. He thinks that a final decision on the UK Ministers who should be members should be taken in the light of this work. He would be sympathetic to Hilary Armstrong's membership if, as seems likely, social exclusion figures prominently in the work programme.

TC 10

I am copying this minute to the Private Secretaries to Gordon Brown, Derry Irvine, David Blunkett, Alistair Darling, Stephen Byers, John Reid, Paul Murphy, Peter Mandelson, Patricia Hewitt and to Sir Richard Wilson.

JEREMY HEYWOOD

FROM : D A BREW
DATE : 15 DECEMBER 1999

SIR RICHARD WILSON

Copy: PS/Lord Chancellor
PS/MCO
PS/Lord Falconer
Alastair Campbell
Jeremy Heywood
Pat McFadden
Jim Gallagher
Quentin Thomas
Willy Rickett

GOVERNMENT ANNOUNCEMENTS AND THE DEVOLVED ADMINISTRATIONS

1. This minute suggests that you invite the Prime Minister to minute the Chancellor of the Exchequer about the importance of ensuring that the devolved administrations are not caught unawares by announcements from Whitehall, particularly on Government Spending. It also offers a draft reply (i) for Lord Falconer to send to Alun Michael and (ii) for you to send to Muir Russell. Both have recently expressed concerns about actual or potential communication failures.

Timing

2. Routine.

Background

3. Muir Russell wrote to you on 8 November expressing his concern about the handling of recent MAFF and Home Office spending announcements. Failure to keep the Scottish Executive closely in touch with spending negotiations which continued up to the wire had undermined effective presentation in Scotland. We should avoid giving the impression – which if it became public would be very damaging – that at the centre of Government there was a disregard for Scotland, Wales and Northern Ireland. Some of these difficulties might be avoided by clarifying the arrangements for access to the Reserve.

4. On 16 November, Alun Michael wrote to Lord Falconer on a similar theme. He emphasised the importance of ensuring that the devolved administrations should not be surprised by announcements from Whitehall. Given prior warning, the administrations could make a supportive and positive response. He was particularly anxious at the potential for Wales to be seen to be adrift of the mainstream.

Consideration

5. There are two slightly separate issues here. One relates to the need to ensure that the devolved administrations are kept up to speed with significant developments in UK policy. We are full of good intentions about that, as the Memorandum of Understanding and

Concordats say. However, some Ministers and Departments are clearly more assiduous than others; and there can be a disturbing tendency in some quarters to develop ideas at the centre while keeping others in ignorance until the last minute.

6. The second issue relates to access to the Reserve. This was discussed before devolution, and the view was that the Barnett formula should not automatically be applied to Reserve claims in comparable programmes for England affecting devolved matters. The consequence is somewhat paradoxical. Applying the formulaic approach during the CSR gives an automatic outcome for Scotland, Wales and Northern Ireland when there is no pressure for an immediate announcement. By contrast, when the devolved administrations need to respond instantly to a one-off spending announcement in-year, they need to negotiate a special deal.

7. A combination of these two factors can all too easily lead to an outcome which wrong foots the Scots or the Welsh and convey the impression that they are entirely peripheral. That does no good for them nor for HMG.

Conclusion and recommendation

8. The two problems require a different response. The first can be tackled only by sensitising Whitehall Ministers to the importance for the Government collectively of their involving the devolved administrations in their plans. That will not be the highest priority of individual Ministers and in my view requires re-enforcement from the top. The second issue may be more difficult to resolve. It is essentially a matter for the Treasury. But the establishment of more automatic ground rules would clearly minimise the scope for the devolved administrations to be caught off guard.

9. Both aspects can be tackled by the Prime Minister minuting the Chancellor of the Exchequer and building on his evident desire to forge a closer and publicly visible alliance with the devolved administrations. I attach a suggested draft.

David Brew

D A BREW

**Room 408b
CONSTITUTION SECRETARIAT
Tel: 270 5917**

DRAFT FOR SIR RICHARD WILSON

Prime Minister

I think it would be timely for you to send a signal to colleagues reinforcing the need for them to factor Scotland, Wales and Northern Ireland into the UK equation in a way which will have been unfamiliar hitherto. There is a risk that making policy announcements without alerting the devolved administrations in good time – particularly where public expenditure is involved – will put them on the back foot and undermine the common front which I know you are anxious to present. I think you could send the necessary signal to colleagues by minuting the Chancellor. A draft is attached.

There are two slightly separate issues here. One relates to the need to ensure that the devolved administrations are kept up to speed with significant developments in UK policy. We are full of good intentions about that, as the Memorandum of Understanding and Concordats say. However, some Ministers and Departments are clearly more assiduous than others; and there can be a disturbing tendency in some quarters to develop ideas at the centre while keeping others in ignorance until the last minute. Gordon Brown's initiative in setting up new Joint Committees with the devolved administrations is aimed at tackling some of the problems which can arise.

The second issue relates to access to the Reserve. This was discussed before devolution, and the view was that the Barnett formula should not automatically be applied to Reserve claims in comparable programmes for England affecting devolved matters. The consequence is that the devolved administrations need to negotiate a special deal each time there is a successful claim.

A combination of these two factors can all too easily lead to an outcome which wrong foots the Scots or the Welsh and conveys the impression that they are entirely peripheral. That does no good for them nor for HMG. It is a problem which has been taxing colleagues in both Scotland and Wales; and which may become increasingly problematic in Northern Ireland unless it is nipped in the bud.

The two problems require a different response. The first can be tackled only by sensitising Whitehall Ministers to the importance for the Government collectively of their involving the devolved administrations in their plans. That will not be the highest priority of individual Ministers and in my view requires re-inforcement from the top. The second issue may be more difficult to resolve. It is essentially a matter for the Treasury. But the establishment of more automatic ground rules would clearly minimise the scope for the devolved administrations to be caught off guard.

Both aspects can be tackled by your minuting the Chancellor of the Exchequer and building on his evident desire to forge a closer and publicly visible alliance with the devolved administrations. I attach a suggested draft.

DRAFT MINUTE FOR THE PRIME MINISTER

CHANCELLOR OF THE EXCHEQUER

GOVERNMENT ANNOUNCEMENTS AND THE DEVOLVED ADMINISTRATIONS

1. You have taken forward proposals with the devolved administrations to ensure the best possible co-ordination between UK Government policy and issues where policy is devolved. You are right to point out that success in achieving our objectives often depends on effective co-operation.

2. There are two areas where I think we need to re-examine our practices in order to deliver joined up Government. One is in keeping our devolved colleagues up to speed with significant developments in UK policy. The other is in making sure that there is absolute clarity about the consequences for Scotland, Wales and Northern Ireland of spending announcements.

3. On the first point, we need to ensure that the devolved administrations have advance warning of announcements from Whitehall Departments in areas for which they have responsibility in their respective areas. It is important that they should not be put on the back foot: they can respond constructively if properly prepared. I am asking Alistair Campbell to assist in that task through the Strategic Communications Unit. However, I think we should consider as a matter of policy allowing a period of time between a decision being taken which will affect the devolved administrations and its announcement. How long this should be clearly depends on the circumstances. As a general rule, I would suggest [a week]. Where events are moving faster colleagues should do their best to keep their counterparts informed before they go public. It is important that the Government should always be aware of the consequences of its announcements for England, Wales, Scotland and Northern Ireland.

4. Second, I should be grateful if you could look at defining more clearly the circumstances in which the devolved administrations would benefit from extra expenditure arising from spending announcements. If the Barnett formula is not automatically to be applied to claims on the Reserve in respect of English programmes, we need to ensure that the overall UK arrangements are settled before rather than after we make an announcement. I

should be grateful if you could look to see whether there are any steps which the Treasury might take to avoid past difficulties and re-examine the case for formula consequentials applying to in-year access to the Reserve.

DRAFT LETTER FOR LORD FALCONER

Rt Hon Alun Michael JP MP AM
First Secretary
The National Assembly for Wales
Cathays Park
CARDIFF
CF10 3NQ

December 1999

GOVERNMENT ANNOUNCEMENTS

Thank you for your letter of 16 November.

Your points are well taken. We are all learning to operate in a devolved world. For my part, I shall do what I can to encourage timely and effective communication between Whitehall and the devolved administrations. I know that Richard Wilson is considering whether there is any more that he or No.10 could do to get the message across.

I am copying my letter to Paul Murphy, Sir Richard Wilson and Alistair Campbell.

DRAFT LETTER FOR SIR RICHARD WILSON

Muir Russell Esq
Permanent Secretary
Scottish Executive
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

December 1999

HANDLING OF SPENDING ANNOUNCEMENTS

I have been mulling over your letter of 8 November; and you will have seen David Omand's letter of 23 November in response.

Your points are perfectly fair. Like you, I hope that the MoU and Concordats will help create a climate in which effective communication becomes second nature.

The Prime Minister has asked for meetings with Donald Dewar and John Reid every two months. He is clearly anxious to ensure that the devolution arrangements operate effectively. We shall obviously wish to encourage best practice; and I shall be considering whether there are any concrete steps which we might take to re-inforce our good intentions.

I am copying my letter to Andrew Turnbull, Richard Packer and David Omand, as well as to Willy Rickett and Quentin Thomas here.



**COVERING
RESTRICTED - POLICY**

Top: DB
CEP

David Brew
Constitution Secretariat
Cabinet Office
70 Whitehall
LONDON
SW1A 2AS

AVRIL HUSTON
RPU2

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS

1/A5 ELAND HOUSE
BRESSENDEN PLACE
LONDON
SW1E 5DU

LCC PMcF
2 F

DIRECT LINE: 0171 890 4210
FAX: 0171 890 4249
GTN CODE: 3533
E-mail: avril_huston@detr.gsi.gov.uk

OUR REF: GR4 3/6/17

15 December 1999

Dear Mr Brew

DRAFT DETR/NATIONAL ASSEMBLY FOR WALES CONCORDAT

I attach for information the draft bilateral concordat between DETR and the National Assembly for Wales. This draft was sent by Andrew Murray to Tony Joss of the Assembly today. The draft is still subject to discussions between DETR and the Assembly; however, we hope to reach official agreement before the end of the year and aim to publish the concordat early in the new year.

I am copying this letter to DP(O) colleagues in case other UK Departments have any difficulties with what we are proposing. Any comments should be sent to me by close of play on Thursday 23 December.

Yours sincerely

Avril Huston

**CONCORDAT BETWEEN
THE DEPARTMENT OF ENVIRONMENT,
TRANSPORT AND THE REGIONS AND
THE CABINET OF
THE NATIONAL ASSEMBLY FOR WALES**

[JANUARY 2000]

<u>Contents</u>	<u>Page</u>
Introduction	
Nature of concordat	
Interpretation	
Confidentiality	
Statutory framework	
Practical arrangements	
Production of Guidance	
Publicity and Publications	
Dispute Resolution	
General Administration	
Public Bodies (including Agency Arrangements)	
Appointments	
Joint working	
Analysis, Statistics, Research and Monitoring	
EU and International Matters	
Review and Renewal of Concordat	
Annexes	

Introduction

1. This concordat is made between the Department of the Environment, Transport and the Regions (DETR) and the Cabinet of the National Assembly for Wales. It is intended to provide the framework to guide the future working relationship between the Secretary of State for the Environment, Transport and the Regions, other DETR Ministers and officials of the Department of the Environment, Transport and the Regions (together referred to in this document as "DETR") and the Cabinet of the National Assembly for Wales, comprising the Assembly First Secretary, Assembly Secretaries and their officials (together referred to as "the Assembly"). The terms "DETR" and "the Assembly" include their respective Executive Agencies where appropriate. The objective of the concordat is to ensure that the roles and responsibilities of DETR and the Assembly in the new constitutional structure are effectively translated into practical working arrangements between the two organisations. The aim is to promote the establishment of close and harmonious working relationships and good communications at all levels between the two organisations, and in particular to foster constructive co-operation.

2. In support of these objectives, DETR and the Assembly will also jointly establish a forum of senior officials intended to help promote good relationships between the two organisations. The forum will focus on administrative and cross-cutting issues rather than specific policy matters or disputes, which will be dealt with under the procedures indicated below. The forum will monitor the effectiveness of this concordat in delivering the aims described above, and will consider the scope for improvements, taking account of the future developing needs of the two organisations. This will include oversight of the formal review process for the concordat referred to in paragraph 39 below.

Nature of concordat

3. This concordat has been drawn up in accordance with the principles outlined in the Memorandum of Understanding (MOU) which sets out the understanding of the UK Government and the administrations of Scotland, Wales and Northern Ireland of the principles that will underlie relations between them. The MOU is supplemented by an agreement on the Joint Ministerial Committee (JMC) and by guidance on common working practices. There are also over-arching concordats setting out the framework for co-operation on EU policy issues, international matters, statistics and inward investment. Where those matters are concerned, reference should first be made to those over-arching concordats. However, where specific arrangements on cost-sharing have been agreed between DETR and the Assembly, those arrangements apply rather than the general cost-sharing provisions of the statistics concordat.

4. This concordat is a voluntary arrangement between DETR and the Cabinet of the National Assembly for Wales. It is not a binding agreement or contract and so does not create any legally enforceable rights, obligations or restrictions. It is intended to be binding in honour only. The Government of Wales Act 1998 ("the

1998 Act") and other legislation provide for statutory consultation by the UK Government with the Assembly in certain cases; this concordat does not create any equivalent or other right to be consulted or prevent consultation beyond that required by statute. Any failure to follow the terms of the concordat is not to be taken as invalidating decisions taken by DETR or the Assembly.

5. The main body of this concordat specifies general working arrangements between DETR and the Assembly. There are also a number of annexes containing additional arrangements which relate to specific subject areas (or groups of subjects). For other subject areas which are not covered in the annexes, the arrangements provided for in the main body of this concordat, taken together with the MOU, the JMC agreement, the over-arching concordats, and guidance on common working practices will be followed.

Interpretation

6. As this concordat indicates, DETR and the Assembly will exchange information and inform or consult each other about a wide range of issues in a wide range of situations. The concordat is not, however, intended to be an exhaustive description of every aspect of the relationship between the organisations, or to preclude communication between them about other issues or in other situations.

7. It is not generally either possible or desirable for the concordat to prescribe in detail the circumstances which will trigger a need to invoke the arrangements set out in this concordat, or the exact form of communication or the timescale involved. Where specific arrangements are necessary on particular topics they are outlined in this concordat and its annexes. DETR and the Assembly will use their judgement, taking into account the terms of this concordat, in determining for any given issue the procedures (including the level of detail and, where necessary, the period of notice) that appear reasonable and appropriate in the circumstances, in accordance with the principle that if either is planning action which impinges on the responsibilities of the other, it should give adequate forewarning.

8. This concordat is framed in terms of the interface between DETR and the Assembly; it is not intended to imply that communications on issues covered by the concordat should not, where appropriate, also involve other UK Departments or devolved administrations; indeed that may be the most effective way of conducting some business. In particular, communications may also involve the Secretary of State for Wales, for example where he has a role under the terms of the 1998 Act, or in the circumstances envisaged in paragraphs 24 and 25 of the MOU.

Confidentiality

9. DETR and the Assembly wish to ensure that the information each supplies to the other will be treated in a way consistent with the level of confidentiality appropriate to it, and in accordance with the principles set out in the MOU. These

arrangements rely for their effectiveness on mutual respect for the confidentiality and sensitivity of information exchanged. Consultation and discussion with the Assembly on matters not in the public domain may be limited to the relevant Assembly Secretary(ies) and Assembly officials, and will be subject to the establishment of suitable arrangements to safeguard confidentiality. DETR and the Assembly will not in any case disclose unpublished information to third parties without the permission of the administration which provided the information, subject to the requirements of the law and other obligations.

10. In considering the case for disclosure, the provisions under the proposed UK Freedom of Information Act will be taken into account. Until such legislation comes into effect, the Open Government Code of Practice on Access to Government Information and the equivalent rules which apply to the Assembly will govern disclosure of information.

Statutory framework

11. The 1998 Act, Orders in Council made under that Act (in particular under section 22 of that Act), and other subordinate legislation made under the Act, provide for a range of functions to be transferred to, or made exercisable by, the Assembly, or to be conferred or imposed on the Assembly subject to specified limitations or constraints. Where such legislation provides, a function exercisable in relation to Wales may be exercisable by the Assembly jointly or concurrently with a Minister of the Crown, and, so far as exercisable by a Minister of the Crown, may be exercisable by him with the agreement of or after consultation with the Assembly. The Assembly may also make arrangements for the exercise of its functions by a Government department or other public authority (but not any legislative functions). Other functions exercisable in relation to Wales (which are not devolved to the Assembly) remain the responsibility of the appropriate UK Minister. Responsibility for primary legislation relating to matters in or as regards Wales remains with the UK Parliament, although powers by order to amend or modify the effect of primary legislation in certain cases may be conferred on or transferred to the Assembly. The Assembly may also have such powers by virtue of being designated to make regulations under section 2(2) of the European Communities Act 1972. Section 31 of the 1998 Act provides that the Secretary of State for Wales is required to consult the Assembly, so far as appears to him to be appropriate, on the Government's legislative programme for each session of Parliament.

Practical arrangements

12. DETR and the Assembly recognise that good communications systems are essential in order to assist the process of policy formation and decision-making in each administration and to meet any consultation or other requirements connected with the exercise of a function. In general, it is expected that communication between DETR and the Assembly will be between their relevant officials, or between DETR Ministers and the Assembly First Secretary or the relevant Assembly Secretary(ies).

DETR and the Assembly undertake to keep each other informed, where relevant, of developments in policy and practice in respect of matters within or affecting their respective responsibilities, including proposals for legislation and other initiatives, and other issues which may be relevant to each other. They also recognise that there will be mutual benefit from the exchange, where appropriate, of information on scientific, technical and policy matters, in accordance with the principles set out in the MOU. Specific arrangements are set out below.

Primary legislation

13. In addition to the duties of the Secretary of State for Wales to consult the Assembly under section 31 of the 1998 Act, DETR will, so far as practicable and appropriate, consult the Assembly at the earliest opportunity on proposals for legislation which would affect the functions or responsibilities of the Assembly or would be of particular impact in Wales. Consultation on legislative proposals not in the public domain may be limited to the Assembly Secretary(ies) and Assembly officials who are responsible for the relevant functions or other matters, and will be subject to the establishment of suitable arrangements to safeguard confidentiality.

14. Where DETR is promoting primary legislation which contains clauses which are specific to Wales, it may where appropriate seek support from the Secretary of State for Wales and his Department in taking these clauses through Parliament. He and his office will therefore be kept informed from an early stage of the detail of these clauses.

15. Where the Assembly proposes to use the Assembly's own powers to amend or modify primary legislation in any area within or relevant to DETR's responsibilities it will so far as practicable and appropriate consult DETR at the earliest opportunity on its proposals. Such consultation will be subject to the establishment of suitable arrangements to safeguard confidentiality. Such consultation will not affect any duty on the Assembly to consult or seek agreement, or to comply with any other condition attaching to the exercise of these powers.

Devolved Functions

16. In relation to functions exercisable by the Assembly, DETR and the Assembly will:

- share information, analysis and research, where this would be of mutual benefit;
- inform each other of any relevant information which comes to their attention which may require action by or have resource consequences for the other party;

- seek to involve each other, as and when appropriate, in policy formation on topics where there is a reasonable expectation that a policy initiative might affect, the other's responsibilities, or be used or adapted by the other;
- inform each other at the earliest practicable stage of any proposal to change primary or secondary legislation, and to highlight the potential implications, so far as apparent, for the other's responsibilities; and
- inform each other at the earliest practicable stage of substantive new policy announcements which may be relevant to the other's responsibilities.

Interface between Devolved and Non-devolved Functions

17. There are some areas where there is a close interface between the devolved functions of the Assembly and non-devolved functions of DETR. DETR and the Assembly will maintain close contact on issues where this arises. In such cases:

- the Assembly will consult DETR at an early stage when there is a possibility that a proposed policy or decision (eg on planning guidance) may have an impact on or be connected with a matter (eg UK or GB-wide strategies) for which DETR is responsible; DETR will similarly consult the Assembly at an early stage where a proposed policy or decision might affect matters for which the Assembly is responsible;
- in the case of planning or analogous cases which are to come before Ministers or members of the Assembly or the Planning Panel for decision and where there is an interface between devolved and non-devolved matters, the Assembly and DETR will inform each other at an early stage; such notification will be in sufficient time to enable the recipient to submit representations, in the same way as other interested parties, for consideration before a decision is reached;
- each party will ensure that the other is kept abreast of developments in policy, practice and legislation, including discussions with third parties, in areas where there is, or could be, an interface;
- the Assembly and DETR will co-ordinate activities where appropriate.

18. DETR may offer advice to the Assembly on the effect of a proposal by the Assembly on functions within DETR's responsibility, and the Assembly may similarly offer advice to DETR on the effect of a proposal by DETR on functions within the Assembly's responsibility. If the administration making the proposal intends to proceed with it without measures to take account, in whole or in part, of the other's advice, it will notify the other administration about this, wherever possible before presenting the proposal in public.

Non-devolved Functions

19. In relation to non-devolved functions of DETR:
- DETR will inform the Assembly, as early as practicable, of proposals which are likely to be of interest to the Assembly, and wherever possible before any public announcement is made;
 - DETR and the Assembly will inform each other of any information which comes to their attention which may require action by the other party.

Joint and Concurrent Powers

20. Joint powers are those where it is a legal requirement for the Assembly and UK Ministers to act in agreement and together. Alternatively, there may be a requirement for UK Ministers to act only after consultation with the Assembly (or vice versa). Concurrent powers are those which either the Assembly or UK Ministers or both will be able to exercise in Wales. In such cases, the provisions in paragraphs 17 and 18 above will apply, subject to any necessary modifications.

Production of Guidance

21. Where the relevant legislation applying in England and in Wales is substantively the same, DETR and the Assembly will consider the scope for co-ordinating the preparation and cross-checking of their respective codes of practice and other published guidance, with the aim of ensuring compatibility and consistency where appropriate. They will also consider whether to issue their respective guidance as part of a joint package. The aim will be to ensure clarity and to avoid confusion for those to whom the guidance is addressed.

Publicity and Publications

22. The Assembly will, where appropriate, inform DETR, in advance, of public statements which can be prepared well in advance (e.g. consultation documents, Press Notices, publication of research findings and reports) on functions of the Assembly for which DETR has responsibility in relation to other parts of the UK or which have an impact on the exercise of functions of DETR. DETR will, where appropriate, inform the Assembly, in advance, of corresponding public statements which can be prepared well in advance on matters relating to functions of DETR for which the Assembly is responsible in Wales or which have an impact on the exercise of any Assembly functions. In preparing publicity campaigns, DETR and the Assembly will consider in advance whether co-ordinated campaigns would be mutually beneficial; and co-operate on delivery where appropriate. When it is preparing publicity or other material which relates to Wales, DETR will abide by the terms of its Welsh Language Scheme, once that has been agreed.

Dispute Resolution

23. The vast majority of matters should be capable of being handled bilaterally between DETR and the Assembly at official or Ministerial/Assembly Secretary level. Where, exceptionally, an issue cannot be resolved bilaterally, or through the good offices of the Secretary of State for Wales, it will normally be referred, in accordance with the MOU and the JMC agreement, to the JMC Secretariat. Whilst such discussions are under way, DETR and the Assembly will continue to be able to act in areas within their respective competence.

24. It is recognised that the above mechanisms will not be appropriate in some, perhaps exceptional, cases which involve third parties, for example where commercially confidential and market sensitive information is involved. In these instances arrangements will need to follow any specific legal requirements.

General Administration

25. The Assembly and DETR will consult each other where appropriate on correspondence and Parliamentary/Assembly business, and on public statements and announcements, in accordance with the arrangements set out in the MOU and supporting guidance material.

Public Bodies

26. A number of public bodies for which DETR is responsible have functions that relate to devolved matters in Wales as well as other functions. DETR will liaise closely with the Assembly on the arrangements for these bodies, and in particular on matters relating to devolved functions. Detailed arrangements are set out in the Annexes as appropriate.

Appointments

27. DETR will consult the Assembly in accordance with section 30 of the 1998 Act in relation to appointments to any public posts which have been specified under that section. DETR may also, where appropriate, consult the Assembly about other appointments to public bodies with a UK or GB remit. Specific arrangements for appointments to certain bodies are included in annexes to this concordat.

Joint Working

28. DETR and the Assembly may set up joint working groups or committees where appropriate. DETR may, where circumstances permit and this is appropriate, invite the Assembly to nominate members of committees which consider for England, matters that are transferred to Wales, or matters which, though not transferred, may affect Wales.

Analysis, Statistics, Research and Monitoring

29. DETR and the Assembly will consult each other regularly about matters of mutual interest on analysis, research, monitoring and statistics, including proposals for and results of research programmes. DETR and the Assembly will, as and where appropriate, co-operate with each other, to the extent that available resources permit, in the provision of data and information needed to fulfil their respective responsibilities. DETR and the Assembly will continue to co-operate on existing research projects covering England and Wales, where that remains appropriate, and may co-operate on future such projects where that is in their mutual interest. The over-arching concordat on statistics provides general guidance on that issue, and should be read in conjunction with this paragraph, subject to any specific cost-sharing arrangements referred to in paragraph 3 of this concordat.

Regulatory impact assessments

30. Where domestic legislation, proposals for EC Directives, other European legislation and other proposed international obligations have an impact in relation to Wales on the costs of businesses, charities or voluntary bodies, a regulatory impact assessment will need to be prepared by DETR or, in the case of Assembly legislation, by the Assembly. DETR and the Assembly will discuss the most appropriate means in each case for obtaining the information necessary for each of them to fulfil their respective responsibilities, and will provide advice and support to the other as appropriate. DETR and the Assembly will also co-operate where either of them decides to carry out a regulatory impact assessment for certain proposals other than by reason of an anticipated impact on costs.

EU and International Matters

General

31. The over-arching concordats on EU and international matters provide general guidance on how these issues should be handled and should be read in conjunction with the following paragraphs.

EU and International Obligations

32. The UK Government will continue to play the leading role in international and EU negotiations. Any legally binding target or undertaking set in this context for the UK as a whole will require a UK-wide response to ensure that the UK can meet it. Similar considerations apply to obligations arising under informal instruments, as defined in the international concordat. Some of the policies needed to meet EU and international obligations may be the responsibility of the Assembly, others will remain with the UK Government. The Assembly will therefore have an important contribution to make in developing and delivering new programmes to meet EU and

international obligations. Regular dialogue and close co-operation between DETR and the Assembly will therefore be essential.

33. The Assembly will co-operate fully with the monitoring and reporting process for EU and international obligations, providing details of, and relevant data on, the results of monitoring, assessment and initiatives carried out within Wales. It will also participate fully in any EU or international monitoring and review of programme measures taken across the UK which together form the UK's response to such obligations.

34. In the case of quantitative obligations, the 1998 Act includes powers that could be used, if needed, to enable the allocation of a share of such obligations to the Assembly. The EU concordat sets out the general approach to be taken in such cases.

35. Where an EU or international obligation is framed in quantitative terms, DETR and the Assembly will discuss the extent to which each will contribute to the UK's efforts to meet the obligation, based on their respective scope for action within their competences and taking account of all relevant circumstances. Such discussions may also where necessary cover the collection of information to assist in determining the appropriate contributions, and the methodology to be used in monitoring performance.

Expert Advice

36. The Assembly will where practicable make available to DETR, in support of the UK's position at EU and international meetings, expert advice as requested. This will include the reasonable provision, at DETR's request, of qualified personnel to form part of the UK's delegation. (This arrangement is in addition to the provisions of the EU concordat covering attendance by representatives of the Assembly at EU and international meetings.)

Finance

37. HM Treasury's Statement of Funding, dated 31 March 1999, sets out the policies and procedures which will underpin the funding arrangements for the Assembly and the other devolved administrations. Where DETR or the Assembly proposes to take action which may have financial consequences for the other, it will inform and consult the other in advance wherever practicable. To the extent that such additional costs arise, they will be dealt with in accordance with the Statement of Funding.

38. DETR and the Assembly will inform each other of any in-year claims they make on the Reserve, other than claims associated with End-Year Flexibility, which are accepted by H M Treasury.

Review and renewal of concordat

39. It will be open to DETR or the Assembly to propose alterations to this concordat at any time to reflect changes in policy or to reflect the evolution of administrative conventions of co-operation and joint working between the UK Government and the Assembly. Annexes may be added, removed or amended separately from the main section, as and when the need arises, by agreement between DETR and the Assembly. In any event, this concordat will be reviewed one year after it is agreed between DETR and the Assembly, and thereafter at three yearly intervals.

ANNEXES TO DETR/NATIONAL ASSEMBLY FOR WALES CONCORDAT

Note: For those subject areas not covered in the annexes, the arrangements provided for in the main body of this concordat, taken together with the MOU and over-arching concordats, should be followed.

Annex 1: Sustainable Development and Environment Protection

- 1.1 Sustainable Development
- 1.2 Environment Agency
- 1.3 Management of Cross Border River Catchments
- 1.4 Marine Environment
- 1.5 Reservoir Safety
- 1.6 Waste Policy
- 1.7 Best Practice Programmes
- 1.8 Energy Efficiency/Fuel Poverty
- 1.9 Environment Issues Affecting Business and Consumers
- 1.10 Climate Change
- 1.11 Inland Waterways
- 1.12 New and Existing Chemicals
- 1.13 Genetically Modified Organisms
- 1.14 Research
- 1.15 Air Quality Monitoring Networks
- 1.16 RIMNET
- 1.17 Radioactive Waste Management
- 1.18 EU LIFE Programme
- 1.19 Royal Commission on Environmental Pollution
- 1.20 Biodiversity
- 1.21 Economic Instruments
- 1.22 Keep Wales Tidy and Going for Green
- 1.23 Environmental Impact Assessment (see Annex 7)

Annex 2: Executive Agencies in DETR with responsibilities in Wales

- 2.1 Background
- 2.2 Assembly/Agency Liaison

Annex 3: Transport

- 3.1 Road Traffic, Road and Vehicle Safety
- 3.2 Welsh Traffic Commissioner
- 3.3 Disabled Persons Transport Advisory Committee
- 3.4 Railways
- 3.5 Aviation
- 3.6 Ports and Shipping

- 3.7 Emergency Planning
- 3.8 State Aid notification procedures
- 3.9 Buses and Taxis
- 3.10 The Standing Committee on Trunk Road Assessment (SACTRA)
- 3.11 The Commission for Integrated Transport (CfIT)

Annex 4: Land Use Planning

- 4.1 Liaison on Policy Development
- 4.2 Meetings
- 4.3 Planning Inspectorate Agency
- 4.4 Orders under Transport and Works Act 1992
- 4.5 Access to DETR Training Courses
- 4.6 Joint Planning Decisions
- 4.7 Common Land
- 4.8 Control of Major Hazardous Development through the Planning System
- 4.9 Crown Development Land

Annex 5: Wildlife and Countryside

- 5.1 Appointments to the Joint Nature Conservation Committee
- 5.2 Biodiversity
- 5.3 Species and Habitats
- 5.4 EU LIFE Programme
- 5.5 Severe Weather Orders
- 5.6 Research
- 5.7 Awards and non-statutory designations
- 5.8 Countryside and rural development
- 5.9 Wildlife Licensing and Crime
- 5.10 Zoos Licensing and dangerous wild animals

Annex 6: Housing and Construction

- 6.1 Housing Revenue Account Subsidy
- 6.2 Private Finance Options including Stock Transfer and Private Finance Initiative
- 6.3 Miscellaneous Finance Matters
- 6.4 Local Authority Housing Management
- 6.5 Registered Social Landlords
- 6.6 Best Value
- 6.7 Homelessness, Rooflessness and Foyers
- 6.8 Supported Accommodation
- 6.9 Low Cost Home Ownership
- 6.10 Right to Buy (including Rent to Mortgage)
- 6.11 Disposal of Land
- 6.12 LA mortgages and assistance with mortgage loans

- 6.13 Homes
- 6.14 Private Sector Renewal
- 6.15 Home Ownership Issues
- 6.16 Rent Officer Services
- 6.17 Rent Assessment Panel
- 6.18 Leasehold Reform and Commonhold
- 6.19 Mobile Homes
- 6.20 Private Sector Rental and Rent Redemption
- 6.21 Building Regulations/Construction related legislation
- 6.22 Energy Efficiency
- 6.23 Radon
- 6.24 Construction Industry
- 6.25 Statistical Services
- 6.26 Cross-cutting and miscellaneous items

Annex 7: Environmental Impact Assessment

- 7.1 International and EU issues
- 7.2 Domestic legislation: policy and implementation issues

ANNEX 1
SUSTAINABLE DEVELOPMENT AND ENVIRONMENT PROTECTION

This is an annex to the concordat between DETR and the Assembly and must be read in conjunction with it. The senior officials in DETR and the Assembly responsible for sustainable development and environment protection policy will meet regularly to discuss matters of mutual interest. The relevant senior officials in the other devolved administrations will be invited to attend.

The annex covers the following topics (NB. This is **not** a comprehensive listing of all areas of areas of sustainable development and environment protection policy covered by the concordat):

- Sustainable Development Policy
- Environment Agency
- Management of Cross Border River Catchments
- Marine Environment
- Reservoir Safety
- Waste Policy
- Best Practice Programmes
- Energy Efficiency/Fuel Poverty
- Environmental Issues Affecting Business and Consumers
- Climate Change
- Inland Waterways
- New and Existing Chemicals
- Genetically Modified Organisms
- Research
- Air Quality Monitoring Networks
- RIMNET
- Radioactive Waste Management
- EU LIFE Programme
- Royal Commission on Environmental Pollution
- Biodiversity (see also Annex 5)
- Economic Instruments
- Keep Wales Tidy

Sustainable Development

1.1 Sustainable Development Policy

1.1.1 DETR and the Assembly will exchange information about their sustainable development strategies and schemes, and about measures of progress towards sustainable development. DETR will lead in putting together reports on Sustainable Development in the UK. In doing so, it will consult the Assembly and include material provided by the Assembly. DETR and the Assembly will work closely together to ensure material supplied is in a consistent and comparable form and so that reports provide a comprehensive coverage of strategy and progress toward sustainable

development in the UK in both functions devolved to the Assembly and those remaining the responsibility of DETR and other Whitehall Departments.

Environmental Protection

1.2 Environment Agency

1.2.1 The Assembly and DETR will consult each other as necessary over their respective responsibilities for the activities of the Environment Agency in Wales and England and on functions of the Agency (including financial matters, but excluding flood defence and fisheries) relating to England and Wales as a whole. They will aim to avoid unnecessary burdens on the Agency.

1.2.2 The detailed arrangements between DETR, MAFF and the Assembly, as the Agency's sponsors, are subject to the requirements of a jointly agreed Sponsorship Concordat.

1.3 Management of Cross-border River Catchments

1.3.1 DETR and the Assembly will liaise closely on matters involving the management and regulation of cross-border catchments. They will establish and maintain arrangements for the Environment Agency to notify DETR and the Assembly of any case which might have a significant effect on water resources, water supply or the quality of water the other side of the border.

1.3.2 DETR and the Assembly will inform each other of any case - for example a determination, designation or decision (such as a discharge consent appeal) - which might have a significant effect on water resources, water supply or water quality the other side of the border and which has not already been notified by the Environment Agency.

1.4 Marine Environment

Monitoring and provision of data

1.4.1 DETR will develop specific arrangements for monitoring data on the marine environment to ensure that the UK can play a leading role in the work of the OSPAR Commission in assessment and monitoring of the marine environment of the maritime area subject to the OSPAR Convention. The arrangements will also aim to ensure that the UK can provide the necessary information for the preparation of progress reports for the North Sea Conferences.

Action in relation to marine emergencies

1.4.2 DETR has responsibility for marine emergencies, including dealing with major spillages of oil and other hazardous substances at sea from ships and which threaten UK interests. However, the assessment of the environmental impact of marine accidents is devolved. DETR's Maritime and Coastguard Agency deals with

marine emergencies and is the competent national authority as required by the OPRC Convention 1990. DETR and the Assembly will therefore liaise closely, as appropriate, on responses to marine emergencies. This will be within the framework of the UK National Contingency Plan.

Assessment of the environmental impact of marine accidents

1.4.3 Marine accidents can have a significant impact on the marine environment. The assessment of such impacts is the responsibility of the Assembly in relation to waters around Wales or DETR in relation to waters around England. DETR and the Assembly will liaise closely to ensure that any wider effects in the others' waters are considered.

1.5 Reservoir Safety

1.5.1 Reservoir safety is a devolved matter. The Institution of Civil Engineers' Reservoirs Committee (or the President of the Institution should the committee be wound up) advises on the appointment of specialist engineers to undertake reservoir duties under the Reservoirs Act 1975. There will continue to be benefit from preserving this arrangement on a GB basis for as long as the statutory functions undertaken by the Committee continue. The Committee's relationship with DETR and the Assembly will be set out in a Working Level Agreement.

1.6 Waste policy

1.6.1 The existing delegation by the Secretary of State for the Environment, Transport and the Regions to the Environment Agency of the function of single competent authority of transit for the purposes of Regulation (EEC) (No) 259/93 will continue, as the Waste Shipment Regulation requires each Member State to appoint a single authority. The Environment Agency will continue to exercise this delegated function in co-operation with the Scottish Environment Protection Agency.

1.7 Best Practice Programmes

1.7.1 The Assembly will be invited to participate in the **Energy Efficiency Best Practice Programme** and the **Environmental Technology Best Practice Programme** (a joint programme between DETR and DTI). Both programmes are UK-wide programmes established under section 5 of the Science and Technology Act 1965. DETR will invite the Assembly to be represented on the committees of officials responsible for determining the strategic direction of both programmes. The views of the Assembly will be taken into account, especially in those elements of the work programmes relating to Wales. The Assembly will also have access to results and other relevant output.

1.8 Energy Efficiency/Fuel Poverty

1.8.1 The Assembly and DETR will co-operate and liaise as necessary over their respective responsibilities for Energy Efficiency, providing for the exchange of information on policy development and practice relating to:

- Energy Conservation legislation including the Home Energy Conservation Act 1995 (a devolved function in Wales)
- Grant assistance schemes designed to alleviate fuel poverty including the Home Energy Efficiency Scheme (Social Security Act 1990 s15 concurrent powers)
- Technical advice and support including briefings/seminars
- Circulars and published guidance
- Sponsored/supported organisations' activities including the Energy Saving Trust (Environmental Protection Act 1990 s.153 concurrent powers).

1.9 Environment issues affecting business and consumers

1.9.1 DETR and the Assembly will liaise closely on:

- **ecolabelling**, a non-devolved issue. DETR will act as the Competent Body for the UK, following the winding up of the UK Ecolabelling Board;
- the **Eco-Management and Audit Scheme (EMAS)**. The administration of the scheme will be carried out by the Institute of Environmental Assessment, which is currently designated as the EMAS Competent Body for England, Wales and Northern Ireland, and for Scotland.

1.10 Climate Change

1.10.1 DETR is responsible for reporting on the UK's progress towards meeting its obligations under the UN Framework Convention on Climate Change. The Convention requires the UK to produce and regularly update a greenhouse gas emissions inventory, a programme, and the preparation of a UK National Communication. These will be prepared by DETR, with the Assembly supplying information as appropriate.

1.10.2 DETR and the Assembly will work closely together to ensure that information supplied to DETR is in a consistent and comparable form. This will include:

- co-operation on the UK emissions inventory to ensure a consistent baseline;
- co-operation on disaggregating the UK inventory; and
- co-operation on emissions projections, sink estimation, and methodologies for evaluating the impact of measures to ensure that UK obligations are met.

1.11 Inland Waterways

1.11.1 DETR will continue to fund the England and Wales activities of British Waterways and will remain the lead (England and Wales) sponsor. DETR will invite

the Assembly, as appropriate, to comment on general policy matters and appointments.

1.11.2 DETR will invite the Assembly, as appropriate, to comment on appointments to the Inland Waterways Amenity Advisory Committee.

1.12 New and Existing Chemicals

1.12.1 EC legislation on new and existing chemicals is intended to protect human health and the environment and to establish a single community market for chemical products. In Great Britain, DETR and HSE act jointly as the competent authorities for new and for existing chemicals. The Environment Agency and HSE have enforcement roles.

1.12.2 The Secretary of State and HSE will continue to act jointly as the GB competent authorities for both new and existing chemicals, but DETR will consult the Assembly before the Secretary of State makes decisions with HSE.

1.12.3 DETR will consult the Assembly over the chemical notification and assessment schemes.

1.13 Genetically Modified Organisms

1.13.1 General policy on genetically modified organisms (GMOs) is largely driven by international agreements and obligations. DETR will continue to lead for the UK on Directive 90/220/EEC on the deliberate release into the environment of GMOs. Marketing approval for GM products is given at European Community level; product approvals are therefore valid across the European Community. DETR will work closely with the Assembly on the development of domestic policies, particularly through the Office of Science and Technology's Interdepartmental Group on Genetic Modification Technology (IGGMOT).

1.13.2 Environmental aspects of GMOs are devolved matters. The Advisory Committee on Releases to the Environment (ACRE) is the UK Expert Committee which advises Government on the deliberate release of GMOs. ACRE will provide advice both to Assembly Secretaries and UK Ministers. Part of the consent process for deliberate release of GMOs includes initial perusal of applications and provision of advice by DETR's Biotechnology Unit, which also provides the ACRE secretariat. A Working Level Agreement between DETR and the Assembly will cover detailed arrangements for provision of expert advice, handling of applications and accessing ACRE. The agreement will also cover inspection and enforcement aspects carried out under part VI of the Environmental Protection Act 1990.

1.14 Research

1.14.1 DETR and the Assembly will work closely to ensure that research within the DETR Environmental Protection Group programme areas provides a sound scientific basis for policy development in protecting and enhancing the environment, so as to

meet UK, EU and international commitments. The UK research programmes will be funded and managed by DETR, guided by relevant Steering Groups comprising DETR and the devolved administrations. The Steering Groups will

- review future strategic needs within the UK and in international fora,
- define specific projects taking account of projects funded by DETR, the devolved administrations, other Government Departments and NDPBs,
- monitor progress of projects, and
- review reports and other outputs.

1.15 Air Quality Monitoring Networks

1.15.1 There are a number of UK Air Quality Monitoring Networks for the collection and dissemination of information on the levels of different types of air pollutants. DETR will act for the Assembly in maintaining the networks in Wales under a Working Level Agreement. DETR and the three devolved administrations will form a steering group to oversee the management of the Networks.

1.16 RIMNET

1.16.1 RIMNET is a UK-wide radioactivity monitoring system which provides warnings of atmospheric radioactivity dangers from overseas (though it can also be used to provide warnings of domestic incidents). RIMNET is a fully integrated system. Accordingly DETR and the Assembly recognise that the current system can only be maintained on a UK-wide basis. Lead responsibility for maintaining and financing the core system will rest with DETR, who will consult the Assembly on all significant aspects of the operation of the system. In particular, DETR will invite the Assembly to be represented on committees of officials responsible for overseeing the system, and for reviewing arrangements

1.16.2 DETR and the Assembly will invite each other to join incident room teams in all cases where emergency planning arrangements have been activated. DETR and the Assembly will also be invited to participate in any training exercises associated with such arrangements.

1.17 Radioactive Waste Management

1.17.1 Given DETR's lead responsibility for relations with the EU, there will be occasions where it will communicate with the EU on matters relating to the EURATOM treaty (which deals with promotion and development of civil nuclear energy), such as in making submissions required under the treaty for changes to Welsh radioactive waste disposal facilities. In these circumstances, DETR will invite the Assembly to draft an appropriate contribution. Similar arrangements will apply in respect of other international commitments, such as the joint Convention on Spent Fuel and Radioactive Waste Management, and OSPAR agreements.

1.18 EU LIFE Programme

1.18.1 The LIFE Programme (which includes separate "Environment" and "Nature" sub-programmes) is a European Commission-run funding scheme for environmental projects. DETR is responsible for relaying UK applications to the Commission. DETR will keep the Assembly fully informed of all developments relating to the EU LIFE programme. DETR will give the Assembly the opportunity to make an assessment of all projects involving Welsh participation or proposed actions in Wales, and will give due weight to the Assembly's assessment of these projects. DETR and the Assembly will agree detailed arrangements for the receipt and assessment of applications under the Life Environment and Life Nature programmes.

1.19 Royal Commission on Environmental Pollution

1.19.1 The Royal Commission on Environmental Pollution (RCEP) is an independent standing body established to give advice on environmental issues. RCEP members are appointed by the Queen on the advice of the Prime Minister. DETR is responsible for submitting candidates for membership of the Commission to the Prime Minister. DETR will seek nominations from the Assembly on appointments and will consult the Assembly before putting advice to the Prime Minister.

1.20 Biodiversity (see also section 5.2 of Annex 5)

1.20.1 The Darwin Advisory Committee advises on the operation of the Darwin Initiative, which supports the implementation of the Biodiversity Convention in developing countries, and advises DETR Ministers which applications to support. Given the Assembly's responsibilities for biodiversity in Wales, DETR will consult the Assembly over appointments to the Committee, and the instructions it prepares for the Committee.

1.21 Economic Instruments

1.21.1 DETR and the Assembly recognise that co-operation would assist in the consideration of new charging arrangements in the environmental field and may wish to make joint approaches to the Treasury and its Ministers on taxation and other financial issues arising in environmental policy, and exchange relevant papers.

1.22 Keep Wales Tidy (KWT) and Going For Green (GfG)

1.22.1 The Keep Wales Tidy programme and Going for Green activities in Wales will be funded by the Assembly who will agree the specifics of the Keep Wales Tidy programme with Environmental Campaigns.

1.23 Environmental Impact Assessment

1.23.1 This is covered in Annex 7.

ANNEX 2
EXECUTIVE AGENCIES OF DETR WITH RESPONSIBILITIES IN WALES

This is an annex to the concordat between DETR and the Assembly and must be read in conjunction with it. It covers the Executive Agencies of DETR whose remit includes Wales.

2.1 Background

2.1.1 DETR has five Executive Agencies that have statutory operating responsibilities within Wales. They are the Driver and Vehicle Licensing Agency (DVLA); Driving Standards Agency (DSA); Maritime and Coastguard Agency (MCA); PINS (Planning Inspectorate); and the Vehicle Inspectorate (VI). In addition the Vehicle Certification Agency (VCA), as the authority responsible for ensuring that new motor vehicles and their constituent parts meet European safety and environmental standards, can also operate in Wales. The Agencies' functions in Wales are non-devolved matters, except where specific functions have been transferred to the Assembly. Other annexes to this concordat deal with specific arrangements relating to certain functions carried out by the agencies; in particular, the Planning Annex covers PINS and its relationship with the Assembly.

2.1.2 Each Agency has a framework document setting out its status, purpose and objectives; statutory and other responsibilities; the responsibilities and accountability of the Chief Executive; and the relationship within DETR and with DETR Ministers.

2.2 Assembly/Agency liaison

2.2.1 Each Agency will nominate a point of contact for correspondence with the Assembly. It will respond, as appropriate, to any reasonable request from the Assembly for information relating to matters concerning the exercise of its functions in relation to Wales, including any operating issues that have a significant impact on devolved matters.

2.2.2 Some information is already provided on a Wales basis. However, the operational management structure of the Agencies reflects the character of their business in providing a consistent service in the UK. It may not reflect national or regional boundaries and accordingly there may be limits on their ability to provide detailed information on past or present activities within the boundaries of Wales.

2.2.3 When Agencies propose management decisions with significant impact on employment or investment issues in Wales, the Agency concerned will provide sufficient supporting information to the Assembly so that the reason for the decision can be fully understood, and will do so in good time before the decision takes effect. Significant questions of Agency resources and structure in relation to non-devolved functions are matters between the Agency and DETR Ministers, bearing in mind that the primary function of the Agency is to deliver a UK-wide, GB-wide or England and Wales-wide service. Where the Assembly wishes to raise questions on such issues, it

will direct them to DETR centrally and not to the local or central management of the Agency concerned.

2.2.4 DETR will inform the Assembly of proposals made for public (non-executive) appointments to the advisory boards of Agencies which operate in Wales, and will be open to suggestions from the Assembly for possible appointees to these advisory boards. DETR will inform the Assembly of all appointments made to these advisory boards, and Agencies will inform the Assembly of Agency executive director appointments to be made within Wales, that will be filled following external advertisement. Specific arrangements applying to the PINS Advisory Panel are set out in para 4.3.6 of Annex 4.

**ANNEX 3
TRANSPORT**

This is an annex to the concordat between DETR and the Assembly and must be read in conjunction with it. It covers:

- Road Traffic, Road and Vehicle Safety
- Traffic Commissioner for the Welsh Traffic Area
- Disabled Persons Transport Advisory Committee
- Railways
- Aviation
- Ports and Shipping
- Emergency Planning
- State Aid notification procedures
- Buses and Taxis
- The Standing Committee on Trunk Road Assessment (SACTRA)
- The Commission for Integrated Transport (CfIT)

3.1 Road traffic, road and vehicle safety

3.1.1 The Assembly has a number of responsibilities for traffic regulation as it affects particular roads or localities; other matters remain DETR responsibilities. There are concurrent powers to promote road safety.

3.1.2 It is envisaged that a UK Group of Road Safety Directors will continue to meet biannually to discuss policy matters of mutual interest or concern. Notifications of policy initiatives, consultations etc on DETR functions (and on Assembly functions with an impact on other parts of the UK) will in the first instance be made to the members of this Group.

3.2 Traffic Commissioner for the Welsh Traffic Area

3.2.1. The Traffic Commissioner for the Welsh Traffic Area is appointed by the DETR Secretary of State and exercises statutory functions involving the operators and drivers of heavy goods vehicles and public service vehicles. Where it is necessary to appoint a new Traffic Commissioner for the Welsh Traffic Area, DETR will invite the Assembly to nominate a representative to sit on the selection panel.

3.3 Disabled Persons Transport Advisory Committee (DPTAC)

3.3.1 The Disabled Persons Transport Advisory Committee (DPTAC) advises the DETR Secretary of State on public transport policies, and on transport policies more generally, as they affect the mobility of disabled people throughout Great Britain.

3.3.2 Members are appointed by the DETR Secretary of State. The Assembly will be accorded observer status on the Committee and, in addition to the arrangements on

appointments set out in paragraph 27 of the main body of the concordat, will be invited to nominate one member to represent Welsh interests on the Committee.

3.4 Railways

3.4.1 The provision and regulation of railways is a non-devolved matter, except that the Assembly is to administer Freight Facilities Grants in Wales within GB criteria. Health and safety of railways and other guided transport systems (as defined in the Railways Act 1993) is also non-devolved and remain the responsibility of HSE, on which reference should be made to the HSE concordat.

3.4.2 DETR will consult the Assembly on railway matters which are of strategic importance to Wales, and on Objectives, Instructions and Guidance to the Franchising Director, and to the Strategic Rail Authority (SRA) once it is established.

3.5 Aviation

3.5.1 Responsibility for civil aviation policy and regulation as they affect Wales remains with DETR, and the Civil Aviation Authority (CAA). The aviation accident and serious incident investigation function, including compliance with the United Kingdom's obligations under Annex 13 to the Chicago Convention and the European Union Directive 94/56/EC, remains the responsibility of the Air Accident Investigation Branch (AAIB) within DETR.

3.5.2 Responsibility for the regulation of aviation and airports in Wales also remains with DETR, although the Assembly is responsible for town and country planning and related environmental impact assessment associated with airport development in Wales. DETR will consult the Assembly on airports policy and other aviation matters which are of strategic importance to Wales. The Assembly will consult DETR on matters within its responsibility which affect UK airports policy or other parts of the UK, including changes to planning policy guidance affecting airports and aviation in Wales. Where such matters involve planning cases which are to come before Ministers or Assembly Secretaries for decision, the provisions of the second bullet of para 17 of this concordat will apply.

3.6 Ports and shipping

3.6.1 Maritime policy and legislation overall, including merchant shipping, ports and harbours, are mainly non-devolved matters. Exceptionally, issues relating to specific fishery harbours (which are those listed in Schedule 4 to the Sea Fish Industry Act 1951) are the responsibility of the Assembly, including the making of Orders under the Harbours Act 1964 and the confirmation of byelaws. The Assembly is also responsible for the commercial sponsorship of the sea fish industry in Wales, but its safety and environmental regulation remain matters for DETR. The protection of culturally and historically important wrecks, under the Protection of Wrecks Act 1973, is devolved to the Assembly and the responsibility of DCMS in England; responsibility for dealing with dangerous wrecks remains a non-devolved matter.

3.6.2 Health and Safety aspects of ports operations (as defined in the Docks Regulations 1988) remain the responsibility of the HSE, and reference should be made to the HSE concordat. DETR is developing safety proposals for the application of a Marine Operations Code for Ports on which, as a non-devolved matter, they will consult the Assembly to the extent relevant to Welsh ports.

3.6.3 Policy and legislation, including casework, arising on Part II of the Coast Protection Act 1949 matters (except in respect of the impact of navigation works on coastal defences), Harbours Act 1964 matters (except in respect of fishery harbours) and other related issues in respect of tidal waters and ports, remain generally the responsibility of DETR, who will keep the Assembly informed from as early a stage as possible about policy developments and board appointments which are likely to be of interest to the Assembly in relation to ports, ferry services and other non-devolved matters, and before any public announcement is made.

3.6.4 The marine accident investigation function remains the responsibility of the Marine Accident Investigation Branch (MAIB) within DETR.

3.6.5 Regulatory, enforcement, search and rescue and counter-pollution functions remain the responsibility of DETR, largely exercised through the Maritime and Coastguard Agency (MCA). The successful conduct of search and rescue and counter-pollution operations will require the closest co-operation between the MCA and the landward emergency services; MCA's regional management will pursue this liaison and the Assembly will have a standing invitation as observers to the UK Search and Rescue Maritime and Aviation, and Inland Committees. (Assessment of the environmental impact of marine accidents is covered by paragraph 1.4.3 of Annex 1.)

3.6.6 DETR remains responsible for the development of maritime safety and regulatory standards. The MCA (or in some cases DETR) normally holds a briefing on the UK Government position before main Committee meetings of the International Maritime Organisation (IMO), to which the Assembly will have a standing invitation.

3.6.7 DETR retains the policy responsibility for the General Lighthouse Authorities and for the management of the General Lighthouse Fund across the United Kingdom and the Republic of Ireland.

3.6.8 Inland waterways are covered by Annex 1, section 1.11.

3.7 Emergency planning

3.7.1 Responsibility for setting transport security requirements, for verifying that they are delivered, and for more general civil emergency planning in relation to railway, aviation and maritime industries remains with DETR, as non-devolved matters. In practice, the closest liaison between DETR, the Assembly and the emergency services and local authorities in Wales will be required in precautionary planning, in dealing with incidents and in facilitating subsequent investigation.

3.7.2 For incidents and emergencies arising from use of inland waters, the responsibilities of the Assembly, of the emergency services and of local authorities will parallel their responsibilities in normal circumstances. For all significant incidents, the Assembly will keep the MAIB informed (in case an investigation is required) and the MCA informed (in case it is necessary to proceed against those responsible under the Merchant Shipping Act).

3.7.3 MCA remain responsible for command and control arrangements in handling maritime emergencies and incidents, and will keep the Assembly informed on events in or affecting Welsh waters. For landward incidents in Wales, involving aircraft or rail services, the Assembly will keep DETR informed as required, and will encourage the relevant bodies in Wales to establish liaison machinery to do likewise.

3.8 State Aid notification procedures

3.8.1 DETR's Europe (Transport, General) Division (ETG) provides advice on the application of transport state aid rules and assists in UK notifications to the Commission. All transport-related State Aid notifications should be submitted through ETG using the procedures set out below.

3.8.2 The Assembly will consult with ETG (who in turn will consult the DTI State Aid Policy Unit, Cabinet Office, FCO, UKRep and other Government Departments as necessary) before producing the notification and covering letter to the Commission.

3.8.3 ETG will send the notification and letter to UKRep and the DTI State Aid Policy Unit; UKRep will send the notification and letter to the Commission Secretariat General, copying to the Assembly, ETG and the DTI State Aid Policy Unit.

3.8.4 ETG will relay to the Assembly and the DTI State Aid Policy Unit the Commission's decision together with any conditions attached to that decision.

3.9 Buses and Taxis

3.9.1 DETR has general responsibility for policy affecting buses and taxis, as non-devolved matters.

3.9.2 The Assembly has limited powers in respect of taxi licensing, specifically to confirm byelaws and to approve resolutions to amalgamate zones. The Assembly has powers in respect of subsidised public transport and administers the Rural Bus Subsidy and Welsh Rural Transport Grant. The Assembly also has limited regulatory powers affecting concessionary fares and local authority owned bus companies.

3.9.3 DETR will consult the Assembly on buses and taxis matters affecting their responsibilities.

3.10 Standing Committee on Trunk Road Assessment (SACTRA)

3.10.1 SACTRA will continue to advise the DETR Secretary of State on a UK-wide basis. Appointments will be made on individual merit with a view to achieving a balance between the relevant professional disciplines and expertise. The nature of the work prevents membership being allocated on an individual basis, but as vacancies arise, DETR will consult the Assembly about possible replacements.

3.11 The Commission for Integrated Transport (CfIT)

3.11.1 CfIT will continue to advise the UK Government on transport issues on an UK-wide basis. Appointments will be on individual merit and DETR will consult the Assembly about possible appointments.

ANNEX 4
LAND USE PLANNING

This is an annex to the concordat between DETR and the Assembly and must be read in conjunction with it. It covers the relationship between the Planning Division of the Assembly and the Planning Directorate of DETR. The principles in this Annex also extend to functions relating to listed buildings, conservation areas and scheduled ancient monuments currently discharged in Wales through Cadw: Welsh Historic Monuments (an executive Agency of the Assembly) insofar as these fall in England to the Planning Directorate of DETR. Environmental Impact Assessment is covered in Annex 7.

4.1 Liaison on policy development

4.1.1 DETR and the Assembly will consult each other at an early stage on planning policy initiatives, including proposed new and revised planning policy guidance or minerals planning guidance notes, draft circulars and policy statements.

4.2 Meetings

4.2.1 Assembly officials and DETR headquarters and Regional Office officials will meet as necessary to discuss issues of mutual concern including policy development, strategic/regional guidance, development plans and development proposals for border areas. Assembly officials will be invited to DETR Director of Planning and Transport meetings where issues of relevance to Wales are to be discussed.

4.3 Planning Inspectorate Agency (see also Annex 2)

4.3.1 The Planning Inspectorate (PINS) is an Executive Agency of DETR and the Assembly, reporting to DETR in respect of its work concerning England, and the Assembly in respect of its work concerning Wales. The Assembly is responsible for meeting the full costs incurred by PINS on its work in Wales. The arrangements which will apply between PINS and the Assembly, under which PINS will provide its services to the Assembly, including specification of the Agency's duties in Wales and the arrangements for making payments to PINS, will be set out in a Service Level Agreement between the Assembly and PINS.

4.3.2 DETR and the Assembly will have access to information each other holds relating to the management of PINS, and will each respect the confidentiality of that information. Officials of both DETR and the Assembly will be able to attend management/liason/review meetings with PINS unless they relate specifically to issues that concern only England or Wales.

4.3.3 The Assembly will be able to set targets for PINS' activities in Wales.

4.3.4 The relationship between the Assembly and PINS will be set out in a revised version of the Planning Inspectorate Agency Framework Document - updating that

issued in May 1998. Until such time as that document is revised, the current Framework Document will be interpreted as follows:

- references to the "Secretaries of State" will be read as "the Secretary of State for the Environment, Transport and the Regions and the Cabinet of the National Assembly for Wales";

- references to the "Permanent Secretary of the Welsh Office" will be read as referring to the "Permanent Secretary of the Assembly";

- references to "the Welsh Office" will be read as "the Assembly".

4.3.5 If Assembly Members ask written Questions in the Assembly concerning matters delegated to the Chief Planning Inspector, the Assembly Secretary will reply.

4.3.6 In addition to the general arrangements set out in para 27 of the concordat and in para 2.2.4 of Annex 2, the Assembly will be invited to nominate one member of the PINS Advisory Panel, following consultation with DETR, to represent Welsh interests on the Panel.

4.4 Orders under Transport and Works Act 1992 (TWA)

4.4.1 The Assembly is responsible for deciding applications for Orders under sections 1 and 3 of the TWA that would have effect only in Wales. The Assembly may, with the agreement of DETR, use DETR's Transport and Works Processing Unit, on an agency basis, to process applications for such Orders.

4.4.2 In general, applications should be made to the Secretary of State for Environment, Transport and the Regions where the application contains provisions relating to both Wales and England (the exception being a limited class of energy-related cases which are a matter for the Secretary of State for Trade and Industry). Such applications should not be made to the Assembly; should an applicant, in error, make such an application to the Assembly both the applicant and DETR should be informed of the error. Where an application relating to both Wales and England is correctly made, DETR will provide the Assembly with a copy of such applications and accompanying documents and inform the Assembly on progress in determining the application at appropriate stages.

4.4.3 Where a public local inquiry or hearing is required, DETR will consult the Assembly on the administrative arrangements, including timing and location. DETR will provide the Assembly with a copy of the Inspector's and any assessor's reports once they are submitted to DETR.

4.4.4 No decision to make an Order relating to both Wales and England will be made without the agreement of the Assembly. A decision not to make such an Order, or a decision to make a separate Order for England only (where the application might suitably be determined in this way) will not be made without first consulting the Assembly. The Assembly will accordingly be invited by DETR, in any TWA case

relating to both Wales and England, to consider the proposed decision prior to the determination of the Order by the Secretary of State and in time for it to consider and reach a conclusion before a decision has to be made.

4.4.5 If, in respect of any Order application which affects Wales, the Secretary of State for the Environment, Transport and the Regions or the Assembly proposes to invoke the procedures under section 9 of the TWA, the DETR will consult the Assembly or vice-versa at official level at least 28 days before a notice is published in the London Gazette under section 9(2) of the TWA.

4.5 Access to DETR Planning Training Courses

4.5.1 Assembly officials will have access to DETR planning training courses on payment of the appropriate course fee.

4.6 Joint Planning Decisions

4.6.1 In planning cases concerning matters within Wales where decisions are to be made jointly by the Assembly and DETR, the Assembly will take the lead in the procedural work, and ensure that all necessary steps are taken, in consultation with DETR, so that a joint decision can be taken.

4.7 Common Land

4.7.1 Where DETR wishes to develop on or enclose common land within Wales, details of such proposals will be provided to the Assembly before the development takes place.

4.8 Control of Major Hazardous Development through the Planning System

4.8.1 HSE will advise the Assembly on matters relating to hazardous substances under the same arrangements as are made from time to time for the provision of advice to Government Departments. HSE also have a role to play as a statutory consultee in relation to applications for planning consents and other consents that concern hazardous substances. These matters may come before the Assembly for decision on appeal or under section 20 of the Planning (Hazardous Substances) Act 1990. In addition, HSE may be consulted on health and safety matters arising in connection with the preparation of Development Plans (which may come before the Assembly under the Town and Country Planning (Development Plan) Regulations 1991).

4.9 Crown Development Land

4.9.1 The provisions of Welsh Office Circular 37/84 (Department of the Environment Circular 18/84) "Crown Land and Crown Development" in respect of developments by Government Departments shall apply in Wales as if references therein to "the Secretary of State for Wales" and "the Welsh Office" are each references to "the National Assembly for Wales".

**ANNEX 5
WILDLIFE AND COUNTRYSIDE**

This is an annex to the concordat between DETR and the Assembly and must be read in conjunction with it. The main administrative areas covered by this annex are :-

- Appointments to the Joint Nature Conservation Committee (JNCC)
- Biodiversity
- Species and habitats
- Countryside and rural development
- Wildlife licensing and crime; and
- Zoo licensing and dangerous wild animals

5.1 Appointments to the Joint Nature Conservation Committee (JNCC)

5.1.1 The JNCC is a statutory body established by the Environmental Protection Act 1990. It is a committee of the three countryside agencies: the Countryside Council for Wales (CCW), English Nature (EN) and Scottish Natural Heritage (SNH). Its role is to deliver the special functions set out in that Act (concerning nature conservation in Great Britain and internationally) and to advise the three Agencies, UK and Scottish Ministers and the Assembly on such matters.

5.1.2 The JNCC ensures that the UK Government and the Assembly receive advice, reflecting input from all three countryside agencies, on matters of GB-wide, European or international importance. The Chairman of each of the countryside agencies is automatically a member of the JNCC. In addition, each of the agencies appoints one of its other members to be a member of the Committee. The Chairman and three others are appointed by the Secretary of State, who will consult the Assembly before making new appointments.

5.1.3 It is intended that the interests of England, Wales and Scotland should be represented by the three members of the JNCC who are appointed under paragraph 2(1)(b) of Schedule 7 to the Environment Protection Act 1990. There are proposals for securing this by making the exercise of the power of the Secretary of State subject to obtaining the agreement of the Assembly for one appointment (and the Scottish Executive for another), or by introducing a consultation mechanism for the appointments (or otherwise ensuring that the interests of Wales (and England and Scotland) are taken into account).

5.2 Biodiversity (see also section 1.20 of Annex 1)

5.2.1 Biodiversity is a devolved matter but the UK Government has overall responsibility for international obligations in this area. DETR is responsible for reporting on measures taken to implement these obligations across the UK.

5.2.2 Many of these measures are reflected in the UK's Biodiversity Action Plan, whose implementation is currently co-ordinated by the UK Biodiversity Group

(UKBG). UKBG also provides a means to exchange information and may operate as a source of advice for both the UK Government and the Assembly. DETR provides the Chairman and the Secretariat for UKBG; any changes in the membership or role of the Group will be with the agreement of the Assembly.

5.3 Species and habitats

5.3.1 The UK has a number of important obligations under European wildlife law, particularly the provisions of the Wild Birds and Habitats Directives. The UK Natura 2000 Steering Committee will continue to provide a forum for the discussion of approaches being taken across the UK on issues associated with the Directives and will aid consideration by DETR and the Assembly on the best means of implementation in their respective areas. DETR provides the Chairman and secretariat for the UK Natura 2000 Steering Committee; any changes in the membership or role of the Group will be the subject of agreement between DETR, the Assembly and the other devolved administrations. The JNCC provides the chair and secretariat of the SPA/Ramsar Joint Working Party, which provides a forum for discussions between Government, the national conservation agencies and NGOs and acts as the Ramsar national committee. Any changes in the Government role or membership of this group will be the subject of agreement between DETR, the Assembly and the other devolved administrations.

5.3.2 DETR and the Assembly will work together on other cross-border wildlife issues as they arise, taking appropriate account of other international obligations on species and habitats.

5.4 EU LIFE (Nature) Programme

5.4.1 The arrangements for taking forward the EU LIFE (Nature) Programme can be found in Section 1.20 of Annex 1.

5.5 Severe Weather Order

5.5.1 The power under section 2(6) of the Wildlife and Countryside Act 1981 to make an order to protect certain wild birds outside the close season is exercisable by the Assembly concurrently with the Secretary of State. The liaison mechanisms relating to the making, issuing, advertising and revocation of orders made under section 2(6) shall be agreed between DETR and the Assembly and set out in a procedural memorandum.

5.6 Research

5.6.1 The overall objective of DETR's Countryside Research Programme is to ensure that the countryside and wildlife policies for the UK are based on the best scientific evidence available. The Assembly will be entitled to be represented on the DETR Countryside Research Liaison Group and relevant steering groups for particular projects.

5.7 Awards and non-statutory designations

5.7.1 If the UK is asked to nominate sites for awards or special designation by the EU or other international fora, the DETR will invite the Assembly to nominate Welsh sites and will discuss these with the Assembly before the UK Government submits any sites. Where DETR does not submit a site nominated by the Assembly, it will give its reasons in writing to the Assembly.

5.8 Countryside and rural development

5.8.1 DETR and the Assembly will liaise on countryside matters, including access, Areas of Outstanding Natural Beauty and National Parks, as well as rural development issues.

5.9 Wildlife licensing and crime

5.9.1 The Assembly and DETR regard cross-border cooperation in tackling wildlife crime as vital. They will continue to work together through the Partnership for Action Against Wildlife Crime, to strengthen and develop wildlife law enforcement in support of their wider species conservation objectives.

5.9.2 The Assembly will be responsible for making arrangements in Wales for licensing and registration procedures and associated inspections under Part I of the Wildlife and Countryside Act 1981. DETR's Wildlife Inspectorate will continue to support the implementation and enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which is not a devolved matter.

5.9.3 The intention is that DETR will undertake the management of bird ringing and registration and wildlife inspections on behalf of the Assembly on an agency basis. The details of the agency arrangements, including liaison mechanisms relating to the management of wildlife licensing, will be set out in a service level agreement.

5.10 Zoos Licensing and dangerous wild animals

5.10.1 DETR and the Assembly will consult each other in relation to the inspection and licensing of zoos under the Zoo Licensing Act 1981 and the implementation of the EU Zoos Directive, whether on major policy issues or on significant casework decisions.

5.10.2 DETR will consult the Assembly about any proposed changes to the Dangerous Wild Animals Act 1976, or to the Schedule to the Act, or successor legislation.

**ANNEX 6
HOUSING AND CONSTRUCTION**

This is an annex to the concordat between DETR and the Assembly and must be read in conjunction with it.

DETR and the Assembly will liaise closely on housing and construction matters, in accordance with the terms of this concordat, in relation to:

- the development of policy;
- the preparation of primary and secondary legislation;
- the preparation of circulars, forms, leaflets and other guidance material; and
- exchange of information.

These matters include those set out below:

6.1 Housing Revenue Account Subsidy

- Resource Accounting
- DSS HRAS concordats

6.2 Private Finance Options including Stock Transfer and Private Finance Initiative

- Private Finance guidelines and funding models
- Evaluation of private finance options and proposals
- Reports on PFI housing pilots

6.3 Miscellaneous Finance Matters

- Capital and revenue distribution issues
- PES information and other financial information
- Meetings of eg Housing Finance Group and Directors of Government Offices for the Regions
- Monitoring forms

6.4 Local Authority Housing Management

- Performance
- Tenant participation
- Allocations policy
- Rent policy

6.5 Registered Social Landlords

- Social Housing Grant rate
- Rent policy

- Availability of private finance
- Funding for RSL supported accommodation

6.6 Best Value

- Best Value in Housing including the Housing Inspectorate.

6.7 Homelessness, Rooflessness and Foyers

- Regulations and statutory guidance

6.8 Supported Accommodation

- Development of policy on funding support costs (together with DSS, Home Office and OGDs).

6.9 Low Cost Home Ownership

- New low cost home ownership initiatives.

6.10 Right to Buy (including Rent to Mortgage)

- Proposals to change discount rules, eligibility, maximum discount, cost floor, etc
- Designation of bodies as approved lending institutions under s156 of the Housing Act 1985
- 'Multipliers' for RTM

6.11 Disposal of land and houses

- Consents for disposal under s32-34 of the Housing Act 1985 and general consents;
- Consents for financial assistance under s25 Local Government Act 1988 and general consents;
- Consents under sections 12, 19 and 43 of the Housing Act 1985;
- Consents under section 9 of the Housing Act 1996.

6.12 LA mortgages and assistance with mortgage loans

- Local authority mortgages
- Local authority mortgage interest rates
- Local authority assistance in connection with mortgages

6.13 HOMES

- Housing Organisations Mobility and Exchange Schemes including financial arrangements.

6.14 Private sector renewal

- Review of fitness standard;
- Review of home renovation grants system and future changes to the system etc;
- Renewal area policies
- Policy for houses in multiple occupation including licensing;
- PRC (and other non-traditional housing) etc housing policies;
- Empty homes policies;
- Care and Repair/home improvement agencies policy.

6.15 Home ownership issues

- The Assembly will be represented on the Advisory Group on the Home Buying and Selling Process;
- Legislative or other proposals flowing from the Advisory Group;
- Liaison with mortgage lenders;
- Flexible mortgages;
- Mortgage protection;
- Repossessions

6.16 Rent Officer Service

- Training and guidance;
- Remuneration of Rent Officers;
- Statistical reports and analyses
- Information technology.

6.17 Rent Assessment Panel

- Remuneration and fees;
- Training;
- Statistical reports and analyses;
- Guidance for panels;
- Meetings of panel presidents and secretaries.

6.18 Leasehold Reform and Commonhold

- Leasehold reforms

6.19 Mobile Homes

- Park Homes Working Party;
- Advice to ROS and RAP.

6.20 Private Sector Rental and Rent Redemption

- Regulated, assured and assured shorthold tenancies;
- Updating weekly multiplier for rent redemptions;

6.21 Building Regulations/Construction related legislation

- Technical advice on appeals and determinations in Wales
- General/technical support for queries from the public, training seminars etc.
- Appointment of 'Welsh' member of BRAC
- Designation of bodies for the approval of inspectors, competent enterprises etc.
- Building Regulations research

6.22 Energy Efficiency – See Annex 1

6.23 Radon

- Technical advice and liaison with NRPB, BGS and BRE

6.24 Construction Industry

- Public procurement practice policy
- Government Construction Clients Panel
- Best practice advice e.g. Construction Best Practice Programme
- Government initiatives e.g. Movement for Innovation
- Coordination of statistics on construction

6.25 Statistical Services

- Advice on forms, including translation of Acts, guidance etc into questions and forms design;
- Provision of household projections for Wales;
- Research affecting statistical concepts on housing (e.g. unfitness measurement) and provision of advice on housing subjects, e.g. for Census of Population;
- Co-ordination of UK aggregate statistics on housing matters;
- Provision of English comparator data;
- Monitoring of European requests for UK housing information

6.26 Cross-cutting and miscellaneous items

- Social inclusion
- Rural housing

ANNEX 7
ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

This is an annex to the concordat between DETR and the Assembly and must be read in conjunction with it.

7.1 International and EU issues

7.1.1 DETR will consult the Assembly on proposed negotiating lines for EC and international instruments. These will include the UNECE Convention on EIA in a Transboundary Context (the Espoo Convention).

7.1.2 DETR will act as the UK's focal point for any cases arising under the Convention or Article 7 of the EIA Directive (Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended by 97/11/EC). DETR will, as appropriate, provide assistance to the Assembly in drawing up and agreeing detailed arrangements for consultation. Detailed arrangements for consultation and publicity will be handled on a case by case basis unless there is a bilateral agreement in place with the Member State concerned, in which case matters will be handled according to that agreement.

7.1.3 The Assembly will inform DETR as soon as it appears to them they may have a project which is likely to have significant effects on the environment of another Member State. DETR will contact the focal point in the Member State concerned to ascertain whether it wishes to be consulted on the project in question. Where DETR is contacted by the focal point of a Member State who wishes to be consulted on a project in Wales, DETR will inform the Assembly forthwith. The Assembly will provide DETR with its statement on the final decision on the project for forwarding to the Member State concerned.

7.1.4 Where a Member State has a project which is likely to have a significant effect on the environment in Wales and its focal point contacts DETR about it, DETR will contact the Assembly forthwith to ascertain whether it wishes to be consulted on the project in question. DETR will pass on the Assembly's response to the focal point of the Member State concerned. Where a Member State's focal point has not contacted DETR but the Assembly has become aware of a project on which it wishes to be consulted, it will contact DETR, which will then let the focal point in the Member State concerned know that the UK wishes to be consulted on the project. DETR will consult the Assembly on publicity for the statement of the Member State's decision on the matter.

7.2 Domestic legislation: policy and implementation issues

7.2.1 DETR will offer assistance and advice to the Assembly on any remaining issues around the implementation of the EIA Directive. The Assembly will pass copies of any remaining implementing legislation to DETR for onward transmission to the European Commission.

OB
E. JJIH
PV



Rt Hon Alun Michael JP MP AM

**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

Prif Ysgrifennydd / First Secretary

Parc Cathays
Cardiff CF10 3NQ
01222 425111 GTN: 1208

Cathays Park
Cardiff CF10 3NQ
01222 425111 GTN: 1208

7th December 1999

Rt Hon Gordon Brown MP
Chancellor of the Exchequer
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

Dear Gordon

JOINT MINISTERIAL COMMITTEES

I have today seen your letter of 3 December inviting me to a meeting on Thursday to set the scene for the future working of these committees.

The letter was faxed to my office only late yesterday. At such short notice I cannot abandon my diary and so I am afraid that I will not be able to attend. Nor is it possible for me to pull in one of my Cabinet colleagues. I have checked their arrangements personally and all are required to be in the Assembly to attend committees or at engagements that I would not wish to see pulled.

I am committed to ensuring that good and fruitful relations exist between the devolved administrations and Whitehall. I was very pleased to welcome Alistair Darling to Cardiff last week to launch jointly this initiative in Wales. Although arranged at very short notice and on a day which was far from convenient for us – we were due to present our first ever budget to the Assembly that afternoon – we set up what I think was a successful event. I regard that as a one off. I had thought there would be communication between us over future plans for these Committees; as you say in your letter, the formalities have yet to be resolved.

I do not expect everyone to be fully acquainted with the Assembly's business schedule which makes it essential that we are consulted over proposed dates for meetings and discussions. It is unfortunate that nobody from here can be with you on Thursday but I hope that consulting us in advance of fixing meetings will avoid a similar problem in the future.

I am copying this letter to the Prime Minister, Alistair Darling, Donald Dewar, members of DP and to Sir Richard Wilson.

Yours sincerely
Alun



NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4PN

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon David Trimble Esq MP
First Minister
The New Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3SS

~~OR~~
C.P.U

~~MT~~ / F

6 December 1999

Joe Davis,

**DEVOLUTION: MEMORANDUM OF UNDERSTANDING AND
OVERARCHING CONCORDATS**

My predecessor wrote to you on 29 September about the series of Concordats developed by the Government designed to underpin working relationships between Whitehall and the devolved administration.

I am very pleased, now that the Executive Committee has been established, to be able to propose to you formally, on behalf of the Government, the enclosed drafts of a Memorandum of Understanding, an agreement on the establishment of the Joint Ministerial Committee and four overarching concordats. We would like these to form the basis of relations between the UK Government and the devolved administration. Responsibility within the Government for the individual texts is set out in the table below:

Document	Responsible Minister	Advised by
Memorandum of Understanding	Lord Chancellor	CO Constitution Secretariat
Agreement on Joint Ministerial Committee	Lord Chancellor	CO Constitution Secretariat



EU Concordat	Foreign Secretary	CO European Secretariat
International Concordat	Foreign Secretary	FCO
Financial Assistance Concordat	Chief Secretary	CO Economic & Domestic Secretariat
Statistics Concordat	Economic Secretary	Office for National Statistics

As you know, the documents have already been agreed with the devolved administrations in Scotland and Wales. Clearly, this is without prejudice to the position of the Northern Ireland Executive Committee and we recognise that they may need subsequent adjustment.

Once the MOU and overarching concordats are in place, we are planning on the basis that individual Whitehall departments will conclude bilateral concordats with their counterparts in the Northern Ireland administration. I shall accordingly be inviting my colleagues in the UK Government to deal with their opposite numbers bilaterally on these other concordats.

At this stage, however, I am also submitting to you a proposed draft of a concordat between the Northern Ireland Office and the Executive Committee, to set out a framework for working arrangements between our two administrations.

I would be happy to discuss any of these issues with you. I hope that we might aim to reach agreement on the texts without too much delay. We would then want to make the final versions available to the UK Parliament, at the same time as you lay them before the Northern Ireland Assembly. I hope that you will be content to proceed in this way.



I am writing in similar terms to Seamus Mallon.

I am copying my letter to members of the UK Cabinet as well as to other colleagues who are members of our Devolution Policy Committee. A copy also goes to Alun Michael and Donald Dewar.

A handwritten signature in black ink, appearing to read 'Peter Mandelson', written in a cursive style.

PETER MANDELSON

ATTACHMENTS

I Memorandum of Understanding

II Supplementary Agreements

A: Agreement on the Joint Ministerial Committee

B: Concordat on Co-ordination of European Union Policy Issues

C: Concordat on Financial Assistance to Industry

D: Concordat on International Relations

E: Concordat on Statistics

III Concordat between the Northern Ireland Office and the Northern Ireland Executive Committee

MEMORANDUM OF UNDERSTANDING**Introduction**

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

2. This memorandum is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations

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

between the parties. It is intended to be binding in honour only. Nothing in this Memorandum should be construed as conflicting with the Belfast Agreement².

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

Communication and Consultation

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

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

5. Against this background, and in confidence where necessary (see paragraph 11 below), the administrations will seek:
- a. to alert each other as soon as practicable to relevant developments within their areas of responsibility, wherever possible prior to publication;
 - b. to give appropriate consideration to the views of the other administrations; and
 - c. where appropriate, to establish arrangements that allow for policies for which responsibility is shared to be drawn up and developed jointly between the administrations.

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

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

Co-operation

7. All four administrations want to work together, where appropriate, on matters of mutual interest. The administrations recognise the
-

importance of co-operation across a range of areas. They also recognise that it may be appropriate for them to undertake activities on each other's behalf, which may be covered in agency arrangements or other agreements.

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

Exchange of information, statistics and research

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

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

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

Confidentiality

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

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

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

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

Correspondence

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

Parliamentary Business

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

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

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

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

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

International and EU Relations

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

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

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

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

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

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

Non-devolved matters

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

The Joint Ministerial Committee

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

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

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

- a. to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- b. where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- c. to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- d. to consider disputes between the administrations.

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

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

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

Implementation of devolution settlements

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

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

Reviewing bilateral relations

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

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

Review of this Memorandum of Understanding

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

II A

AGREEMENT ON THE JOINT MINISTERIAL COMMITTEE

1: The Joint Ministerial Committee

1.1 The UK Government and the three devolved administrations have agreed to participate in a Joint Ministerial Committee (JMC) consisting of Ministers of the UK Government, Scottish Ministers, Members of the Cabinet of the National Assembly for Wales and Ministers in the Northern Ireland Executive Committee. This supplementary agreement sets out the basis on which the Committee will operate, pursuant to the Memorandum of Understanding.

1.2 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.

1.3 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, and the Deputy Prime Minister, the Scottish First Minister and one of his Ministerial colleagues, the Welsh First Secretary and another Assembly Secretary, the Northern Ireland First Minister and Deputy First Minister, and the Secretaries of State for Scotland, Wales and Northern Ireland. Other Ministers and Assembly Secretaries will be invited to attend as appropriate when issues relevant to their areas of responsibility are to be discussed.

1.4 The Joint Ministerial Committee may also meet in other "functional" formats: for example, a meeting of the Agriculture Ministers of the UK Government and the devolved administrations, a meeting of Environment Ministers of the UK Government and the devolved administrations, and so on. 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.

1.5 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, the 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.

1.6 Meetings of the JMC, in its various guises, will be held for two purposes: to take stock of relations generally and of the way in which the

devolution arrangements are working in a particular area; 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: ie following an unsuccessful bilateral exchange at Ministerial level.

1.7 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. 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.

1.8 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.

1.9 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.

1.10 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

1.11 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.

Committee of officials

1.12 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.

1.13. Meetings will be regarded as confidential by the participants. The official Committee may establish sub-committees to deal with individual subject areas. In particular, a sub-committee for EU business will prepare EU issues. The same principles of membership, chairmanship and secretarial support and confidentiality will apply to the sub-committees as to the principal official committee.

Joint Secretariat

1.14 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.

AGREEMENT ON THE JOINT MINISTERIAL COMMITTEE

2: Annex on the Secretariat to the JMC

2.1 The Joint Secretariat will comprise staff from the UK Cabinet Office and the devolved administrations. Initially they will be located in their respective capitals, unless in the longer term the volume of work makes co-location of the Secretariat appear a viable option. 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.

2.2. 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 who have to give evidence before the legislature of a different administration; and
- g. helping to resolve bilateral problems, including vires disputes.

2.3 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.

2.4 The Joint Secretariat will also liaise as necessary with the Joint Secretariat to the British-Irish Council established pursuant to the Belfast

Agreement¹.

2.5 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.

¹ The British-Irish Council comprises representatives of the British and Irish Governments, the Northern Ireland Executive, the Scottish Ministers, the National Assembly for Wales, 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.

II B

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

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

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

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

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

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

General

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

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

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

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

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

North/South Arrangements

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

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

Definitions

1. In this document,

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

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

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

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

Provision of Information

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

3. These arrangements will rely for their effectiveness on mutual respect for the confidentiality of information (including statistics)

exchanged. Complete confidentiality is often essential in formulating a UK negotiating position in the EU and in developing tactical responses.

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

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

Ministerial involvement

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

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

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

devolved administrations. The procedure to be followed for handling EU business within the JMC is laid down in the supplementary agreement on the JMC.

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

Official Involvement

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

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

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

Attendance at Council of Ministers and related meetings

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

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

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

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

Implementation of European Union Obligations

16. It will be the responsibility of the lead Whitehall Department formally to notify the devolved administrations at official level of any new EU obligation which concerns devolved matters and which it will be the responsibility of the devolved administrations to implement in Scotland, Wales or Northern Ireland (although the arrangements for policy formulation and negotiation described above should ensure that the devolved administrations are already aware of new obligations). In addition, Whitehall Departments will, as necessary, liaise closely with the devolved administrations about the implementation by UK legislation of obligations in non-devolved areas, particularly where these could touch on areas which fall within the responsibility of the devolved administrations.

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

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

19. Where EU legislation provides, in relation to matters falling within the responsibility of the devolved administrations, for the possibility of

local measures or derogations within Member States, subject to Commission approval, and where such legislation is being implemented separately in Scotland, Wales or Northern Ireland, the relevant devolved administrations will first consult the lead Whitehall department on whether there are wider UK policy implications. Whitehall departments will also inform the devolved administrations of any similar plans they might have. If, following such consultation, a devolved administration wishes to proceed with such local measures, the request for approval will be routed through UKRep, involving the lead Whitehall Department as necessary, and copying to them in any event.

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

Enforcement of European Union Obligations

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

Infraction Proceedings

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

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

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

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

Representation in Brussels and Links with European Union Institutions

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

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

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

Nominations of Representatives

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

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

Scrutiny of EU Legislation

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

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

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

II C

CONCORDAT ON FINANCIAL ASSISTANCE TO INDUSTRY

Introduction

1. 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, will be devolved to the Northern Ireland Assembly.
2. 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.
3. In drawing up this concordat, particular account has been taken of the financial assistance offered to inward investors. Building on existing practice, there will 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.
4. This concordat does not create any legal relations between the signatories nor any legal right to be consulted.

Definitions

5. In this concordat:

- 'devolved administrations' means the Scottish Executive, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee; and
- 'Ministers' means Ministers of the UK Government, Scottish Ministers, Welsh Assembly Secretaries and Northern Ireland Ministers.

Legislation

6. 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

7. 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; and
- involving relocation from one part of the UK to another.

Ministerial Group

8. The arrangements will be overseen by representatives of the United Kingdom Government and the devolved administrations, in a Group whose members will be:

- Ministers from the Department of the Environment, Transport and the Regions, the Treasury, the Department of Trade and Industry and the Foreign and Commonwealth Office;
- Ministers (or their equivalents) representing each of the Scottish Executive, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee.

9. Its terms of reference will be:

- to facilitate the exchange of information on financial assistance between the United Kingdom Government and the devolved administrations;
- 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;
- to keep arrangements for financial assistance under review; and, in particular, to carry out a full review of the arrangements set out in this paper in April 2000.

10. 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.

Peer Review

11. Arrangements will be put in place for ex post peer review of selected cases involving financial assistance to industry, to be undertaken on behalf of the official committee, to ensure a continued common understanding and to allow the collection and diffusion of experience and good practice.

Independent Evaluation

12. There will be continuing GB or UK-wide periodic independent evaluation of major programmes of financial assistance to industry on the model of previous evaluations of Regional Selective Assistance (RSA).

Guidelines

13. The UK Government and the devolved administrations in Scotland and Wales recognise that they have inherited common guidelines on financial assistance to industry. Separate but comparable arrangements apply in Northern Ireland. 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

14. 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 Committee on Overseas Promotion, on which the Scottish Executive, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee will be represented.

15. Where inward investment functions are carried out by publicly funded bodies, 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 the secretariat to the Ministerial Group, and overseen by the official committee referred to above. The secretariat will have no direct contact with potential investors which will as at present negotiate primarily with the relevant regional or national development agencies.

Financial Limits

16. There will be agreed financial limits covering those major schemes of financial assistance to companies administered directly by the UK Government and the devolved administrations. These limits will apply on a common basis to all areas of the UK having equivalent assisted area status; and where they are applied to a particular project, will cover all forms of assistance which are defined as state aid under EC rules (such rules, and the designation of the assisted areas map, are agreed with the European Commission), or which are otherwise agreed by the parties.

Relations with the European Union

17. Financial assistance to industry is an area which is subject to EC State Aid rules. In particular, the European Commission has certain powers under Articles 92 and 93 of the Treaty of Rome. 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. The devolved administrations will be covered and will abide by EC rules on state aid.

18. 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.

19. 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

20. 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 in relation to particular cases or policy matters, remaining differences will need to be resolved through discussions between Ministers.

II D

CONCORDAT ON INTERNATIONAL RELATIONS – NORTHERN IRELAND

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

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

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

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

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

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

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

Review and dispute resolution

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

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

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

8. This Concordat will be reviewed annually.

CONCORDAT ON INTERNATIONAL RELATIONS: COMMON ANNEX

Definitions

1. In this document,

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

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

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

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

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

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

Contents

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

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

Exchange of Information

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

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

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

Formulation of UK policy and conduct of international negotiations

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

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

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

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

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

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

Implementation of international commitments

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

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

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

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

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

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

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

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

Co-operation over legal proceedings

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

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

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

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

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

Representation Overseas

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

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

Secondments and training co-operation

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

Visits

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

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

Public diplomacy, the British Council and BBC World Service

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

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

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

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

Trade and inward investment promotion

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

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

through adherence of all concerned to guidelines agreed by the Committee on Overseas Promotion on which the devolved administrations will be represented.

Diplomatic and consular relations

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

CONCORDAT ON STATISTICS

Introduction

1. This Concordat sets out an agreed framework for co-operation among the UK Government and devolved administrations¹ on all matters in relation to statistics. It assumes the general arrangements agreed by the four administrations in the Memorandum of Understanding. More specific arrangements will be contained within bilateral concordats between UK Government departments and the devolved administrations. 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.

2. The administrations recognise that co-operation in statistical work 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.

Purpose of Concordat

3. The purposes of this Concordat are:

- to specify the basis on which the four administrations, and their respective departments, consult with each other, exchange information, and work together in relation to statistics; and
- to specify the basis for co-operation across the administrations on professional matters relating to statistics.

Parties to the Concordat and arrangements for review

¹ The General Register Office for Scotland is part of the Scottish Administration and is included within the scope of this concordat.

4. This Concordat is made between the Head of the Government Statistical Service (GSS), the Permanent Secretaries to the Scottish Executive and to the National Assembly for Wales, the Head of the Northern Ireland Civil Service and the Head of the Home Civil Service.

5. The Concordat will be formally reviewed after one year, and thereafter every five years. A formal review can be held at any time at the request of any party, but a review of the operation of the Concordat will be conducted every year. The views of all parties, including Departments of the UK Government ("UK Departments"), must be sought on any proposed changes to the Concordat.

Implementation of the Concordat

6. The basic principles underlying the implementation of the concordat are as specified in the Memorandum of Understanding. If statistical matters cannot be resolved by the parties directly involved, the Head of the GSS will attempt to broker an agreement before the Joint Ministerial Committee procedures are invoked.

Other Concordats

7. Where bilateral concordats describe arrangements to be made in relation to statistical matters, these arrangements are based on the principles set out in this document, unless explicitly stated otherwise.

8. In particular, some of the devolved administrations may establish concordats with the Office for National Statistics (ONS), which deal with a number of professional and other issues.

Scope of the Concordat

9. The Concordat covers:

- any government activity involving the use of information for statistical purposes, including information obtained from administrative, statistical or other sources, where two or more of the administrations have a direct interest as information providers or users: this includes, but is not restricted to, work carried out by the Government Statistical Service;

- activity associated with ensuring the maintenance of consistently high professional standards across the administrations in the provision and use of statistical information.

Basis on which administrations will work together

10. This section describes the basis on which the four administrations agree to work together on statistical issues.

10.1 The administrations will provide each other with the information for statistical purposes which they agree is required to meet business needs, subject to availability, agreements about cost sharing, and adherence to the other terms of this agreement.

10.1.1 Each administration collects and processes statistical information that may be required by the others to meet their business needs. Unless there are exceptional circumstances that can be clearly demonstrated, or legal barriers which cannot be overcome, each administration will make this information available to the others, in line with any specific agreements about how the terms of this concordat are to be applied. In deciding whether and how to exchange information, any principles which apply within administrations will apply between administrations, except that administrations will not be required to provide information to each other about the statistical advice which has been given to policy makers or Ministers (although they may agree to do so). Information provided by one administration to another or others will also be accompanied on request by supporting information on the quality of what is provided.

10.2 Administrations will reach agreements about cost sharing where appropriate.

10.2.1 Existing arrangements for cost sharing will continue until one or more parties propose change. Any party may propose change where new demands are made, where the costs to the providers change, or where circumstances change. The arrangements will then be negotiated.

10.3 The administrations will work together to ensure the provision of agreed coherent, reliable, consistent and timely statistics about and across the UK.

10.3.1 In addition to ensuring exchanges of information, the administrations will co-operate to ensure that there are readily available, high quality and timely statistics about the UK, disaggregated as appropriate. They will agree mechanisms which ensure that these statistics are readily available to all four administrations, the Parliaments / Assemblies, international organisations, data providers and users, and the public - either by providing them directly or by providing information about sources. They will work together to ensure that all the statistics which are provided are coherent, reliable, are collected and compiled in a way which represents good value for money, and are consistent as far as data sources permit.

10.3.2 Heads of Profession in Scotland, Wales and Northern Ireland will work with their UK Government counterparts and the Head of the Government Statistical Service as appropriate where statistics are required to be submitted on a UK basis to the EU or other international bodies. Subject to the terms of the concordats on EU and international relations, the Head of the GSS will retain responsibility for the fulfilment of UK statistical obligations to the EU and international bodies and for EU/international liaisons and co-operation on statistical matters.

10.4 The administrations will each consult on statistical developments, and proposed publications, which could have an impact on the other.

10.4.1 It is the responsibility of each administration to inform, and seek comment from, the others about any proposed significant changes to existing activity, or proposed release of statistical information, which might be considered relevant to the others. Statistics (and related commentary) to be published or released about Scotland, Wales or Northern Ireland by a different administration will be checked as necessary with the relevant devolved administration(s) for statistical validity before the final version is agreed. Statistics (and related commentary) to be published or released about the UK or England by a devolved administration will be checked as necessary with the relevant UK Department(s) for statistical validity before the final version is agreed. It is the responsibility of those quoting statistics about another part of the UK to decide when it is necessary to consult explicitly with the relevant administration(s): in many cases, this will not be necessary.

10.5 Statistical work will be carried out to common professional standards.

10.5.1 Statistical work in the four administrations will be carried out in line with the Code of Practice on Official Statistics. Heads of Profession in Scotland, Wales and Northern Ireland will liaise with the Head of the GSS to ensure that, where appropriate, statistics in devolved areas satisfy any criteria set for GSS outputs. Similarly, Heads of Profession in UK Departments will liaise with the Head of the GSS to ensure that statistics about the UK and England provided by their own departments, where appropriate, also satisfy such criteria.

10.5.2 The basis on which statistical information given in confidence can be used and exchanged is described in the Official Statistics Code of Practice.

10.5.3 The administrations recognise their responsibility to monitor, and where appropriate to control, the compliance costs associated with surveys on businesses and local authorities. They will work together to minimise the total compliance cost burden, while seeking to ensure that each administration has access to the information that it needs.

10.5.4 The recruitment, development and promotion of Government Statistical Service professional staff will be based on a common set of professional competences and in accordance with the GSS Human Resource Strategy. Heads of Profession and the Head of the GSS will work together to promote, and ensure adherence to, high technical and ethical standards, and to facilitate the movement of statistical staff between the administrations.

10.6 The administrations will share statistical expertise and development.

10.6.1 Statistical staff will co-operate to ensure best value for the resources invested in technical and staff development. They will keep each other informed of developments - to reduce duplication, and promote good practice. They will agree to share specific development tasks, both to maximise the use of available specialist expertise, and as one means of cost sharing. They will identify, and reach agreement on, any commercial considerations (such as charging to external customers - or to each other) before any development work starts.

10.7 The Office for National Statistics will provide the GB administrations with a range of professional, technical and personnel services.

10.7.1 ONS will provide a staff recruitment and transfer service to the three GB administrations, whereby they will manage the recruitment and initial deployment of members of the statistician group, advertise vacant posts across

the GSS, broker transfers among GSS staff, and provide information and advice about recruitment of statistical staff (NB. statistical staff working in Northern Ireland are not part of the GSS). ONS will provide methodological advice to the UK administrations. These arrangements will be subject to cost sharing agreements as described in 10.2 above.

10.8 GSS staff will contribute to the work of the GSS, and promote its values

10.8.1 In its role of co-ordinating the work of the GSS, ONS will invite statistics staff across the administrations (including those who are not members of the GSS) to participate in, and keep them informed about, GSS activities, and consult them about issues of statistical policy and methodology. GSS staff across the administrations will make a constructive contribution to the work of the GSS, including serving on its committees. Heads of Profession will serve on the GSS Policy and Management Committee, will consult with and be consulted by the Head of the GSS on key issues relating to professionalism and integrity, and will promote GSS outputs and agreed GSS policy and values.

III

CONCORDAT BETWEEN NORTHERN IRELAND OFFICE AND THE NORTHERN IRELAND EXECUTIVE COMMITTEE

(This is the draft concordat proposed by the UK Government: it is a statement of the UK Government's proposals which can be agreed only when the Northern Ireland Executive Committee has had the opportunity to consider and respond. In the meantime, and pending agreement, the UK Government will act in accordance with the proposals for co-operation contained in this draft.)

INTRODUCTION AND AIMS

1. This concordat sets out an agreed framework for working arrangements between the Northern Ireland Office and the Northern Ireland administration¹ on matters in which they have a mutual interest. This includes matters which cross the divide between the transferred field and the reserved and excepted fields. The Northern Ireland Office and the Northern Ireland administration recognise the benefits to be gained from co-operation on matters of

mutual interest and the continuation of existing linkages and working relationships where this would continue to bring benefits to both administrations.

2. In addition to this concordat, there is a Memorandum of Understanding setting out the principles and practices which underlie relations between the UK Government, the Northern Ireland Executive Committee, the Scottish Executive and the National Assembly for Wales. The Northern Ireland Executive Committee and the Secretary of State will implement the practices set out in the Memorandum of Understanding and abide by the spirit of that Memorandum. This includes abiding by the guidelines on confidentiality.

3. The principal aim of this concordat is to set out new arrangements for administrative co-operation and exchange of information, building on the good working relationships which already exist. It sets out some mechanisms for the handling of

¹ In this concordat, "Northern Ireland administration" means the Executive Committee of the Northern Ireland Assembly (as defined in Section 20 of the Northern Ireland Act 1998) and the Northern Ireland departments (as defined in section 21 of the Northern Ireland Act 1998).

business between the Northern Ireland Executive Committee and officials of the Northern Ireland departments on the one hand, and the Secretary of State for Northern Ireland, Ministers and officials of the Northern Ireland Office and its Executive Agencies on the other. It also covers in broad terms the relationship between public bodies in the reserved and excepted fields and the Northern Ireland administration.

4. The two administrations recognise that they will also have working relationships within other institutional and constitutional arrangements, and in particular through the British-Irish Council and the British-Irish Intergovernmental Conference. This concordat does not prejudice any arrangements agreed by the two administrations in respect of such relations.

5. This concordat is a non-statutory agreement between the Secretary of State and the Northern Ireland Executive Committee. It will not create legal obligations or place restrictions on either party. It acknowledges, and does not prejudice, the prerogatives and rights

of both the UK Parliament and Northern Ireland Assembly in relation to the matters dealt with in this concordat.

KEY PRINCIPLES

Co-operation on matters of mutual interest

6. The Secretary of State and the Northern Ireland Executive Committee note that some policies within the responsibility of the Northern Ireland administration will have implications for the responsibilities of the Secretary of State, and vice versa. They also note that there are cross-cutting issues involving both reserved or excepted matters and transferred matters, where there will be a need for co-ordination and agreement to ensure coherent policy development and effective administrative action.

7. They therefore undertake to keep each other informed, at both Ministerial and official level, about relevant policy initiatives and legislative proposals in their respective areas of responsibility, which have an impact on the other's area of responsibility. Wherever possible, sufficient time will be given to enable the other

to comment on the proposals, although it is accepted that there will be areas of action in which advance notification is not appropriate or is very limited. Wherever possible, they will notify the other prior to making any public announcement of a relevant proposal for action.

8. In general the circumstances of advance notification will vary widely, so it is not appropriate to lay down uniform guidelines. However, given the provision in the Northern Ireland Act 1998 for the Secretary of State's role in the legislative process of the Northern Ireland Assembly (see also paragraph 19), and the Assembly's role in respect of the Secretary of State's own legislative powers, there will be particular advantages to both administrations in early notification of proposed legislation. The Secretary of State and the Northern Ireland Executive Committee therefore commit themselves, in general, to giving the other not less than 3 months notice of their intention to introduce primary legislation which has an impact on the other's area of responsibility. Where practicable, the same advance notice will be given of subordinate legislation, except where it is of a purely routine

nature. Both administrations accept that these targets may not be feasible in cases of urgent legislation. They also undertake to give the other copies of their draft legislation as soon as practicable, and copies of all legislation once it is made (even if a copy of the draft has already been provided).

9. At Ministerial level, a formal mechanism will be established for regular meetings between the Secretary of State and the First Minister and Deputy First Minister [and, as appropriate, other NI Ministers] to discuss matters of mutual interest (see paragraphs 10 and 11 below). The proceedings of these meetings will be treated as confidential by the participants, in order to allow for free and open discussion. The fact of such meetings taking place may be made known publicly, and there may be occasions on which the participants agree to issue a public statement about some aspects of the meeting.

10. There will be regular meetings between the Secretary of State and the First Minister and Deputy First Minister to discuss cross-cutting issues. These meetings would also be attended by any

relevant Northern Ireland Minister whose responsibilities were particularly affected by the issues on the agenda.

11. Additionally, the Secretary of State is committed to regular consultation with the Northern Ireland administration on reserved and excepted matters for which he has responsibility. The Secretary of State will hold regular meetings with the First Minister and Deputy First Minister [and other NI Ministers] to exchange views on these matters.

12. Where Northern Ireland Ministers wish to raise matters in the reserved or excepted fields for which the Secretary of State is responsible, outside of the scope of these regular meetings, they will write to the Secretary of State setting out their concerns. Such enquiries will be dealt with either by Ministerial correspondence or - where more appropriate - by a meeting.

13. There are already good working-level links between relevant NIO and NI departmental officials, and it will be of mutual benefit to ensure continued co-operation, taking place

through day-to-day contact, ad-hoc meetings and formal working groups, to formulate and review policies and action in areas of interdependence. In some areas of administrative activity where NIO and NI departmental officials need to work together to deliver agreed objectives, it may be appropriate for working arrangements to be set out on a contractual basis, as provided for in paragraph 25. However, this concordat should not limit co-operation or exclude any other arrangements which operate to the satisfaction of both parties.

Cabinet business

14. The Secretary of State will continue to represent Northern Ireland interests in the UK Cabinet and its Committees, and from time to time issues may arise there that bear on the responsibilities of the Northern Ireland administration. (Such issues may also fall to be considered in the Joint Ministerial Committee.) In such circumstances, the Northern Ireland administration will, on request, provide the NIO with relevant information to enable the NIO to brief the Secretary of State. The NIO will in turn notify the

Northern Ireland administration of the outcome of the Cabinet discussion of that issue.

Invitations

15. It is likely that the Secretary of State and other UK Ministers will continue to receive invitations to events within the transferred field in Northern Ireland, for example, visits to schools or speeches at conferences etc. In each case the relevant Northern Ireland department will, on request, provide full information about the event to the Northern Ireland Office to enable it to advise the UK Minister about the event.

Correspondence

16. In order to ensure, as far as possible, the provision of a satisfactory level of service and accountability to the public, a general statement on the handling of correspondence is desirable. However, it is recognised that there may be circumstances in which these rules will need to be applied flexibly. In general, the responsible administration will answer correspondence in

accordance with its own published standards for answering correspondence.

17. Correspondence addressed to Northern Ireland Ministers which relates solely to a reserved or excepted matter for which the Secretary of State is responsible will usually be transferred to the Secretary of State for reply, with a copy of the holding reply (which will indicate how the letter is being dealt with and, where appropriate, to whom the reply will be sent). Where it would be more appropriate for the Chief Executive of an NIO Executive Agency to reply, the Secretary of State will ask him/her to do so. Correspondence addressed to the Secretary of State which concerns only transferred matters will be transferred to the relevant Northern Ireland Minister for reply, following the same procedure.

18. Where the Secretary of State receives correspondence which relates to both transferred and reserved or excepted matters, he will reply to the points within his responsibility, having passed a copy to the Northern Ireland administration to deal with the transferred matters. Where Northern Ireland Ministers receive

correspondence of this type, they will deal with it following the same principles.

Legislation

19. The Northern Ireland Act 1998 confers certain powers on the Secretary of State in respect both of Bills of the Assembly, and subordinate legislation by Northern Ireland Ministers and departments, notably under sections 8, 14, 25, 26 and 27 of the Act. Where possible, all efforts will be made in advance by the Secretary of State and Northern Ireland Ministers to resolve points that might engage the Secretary of State's powers under these sections. The Secretary of State will, so far as possible, seek to use those powers so as to facilitate the proposals, and the timetable, of the Northern Ireland institutions.

Public Bodies

20. The Secretary of State remains responsible, and accountable to Westminster, for certain matters in the reserved and excepted fields, including matters for which public bodies in these fields have operational responsibility. The two administrations

recognise that there may be aspects of the matters dealt with by these bodies which impinge on the responsibilities of the Northern Ireland administration. It will be a matter for agreement between these bodies and the Northern Ireland administration to make appropriate arrangements for co-operation at working level on these aspects of their work; the Secretary of State will encourage the bodies to do so in a manner consistent with their statutory remit. The Secretary of State may also have an interest in discussions where policy or resource issues are addressed, and will be kept informed by those bodies of such discussions and given the opportunity to participate, or be represented, as appropriate.

Personnel

21. A substantial proportion of the Northern Ireland Office is staffed by members of the Northern Ireland Civil Service on secondment from the Department of Finance and Personnel. The two administrations acknowledge therefore the need to maintain existing arrangements for consultation and agreement on staffing issues including the delegation of pay and grading, mobility and the management of the Senior Civil Service. It is expected that

arrangements will also continue for the provision of common personnel services and personnel information, subject to service level agreements, letters of understanding and charging regimes where appropriate.

Financing issues

22. The relationship between the Secretary of State and the Northern Ireland administration in regard to financing issues will reflect the principles set out in the HM Treasury document "Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: A Statement of Funding Policy". These provide that in certain circumstances the Secretary of State may, on behalf of the devolved administration, raise issues regarding disputes over funding policy with Treasury Ministers, if necessary, in Cabinet. In circumstances where this role may arise, the NIO and the Northern Ireland administration agree that the maximum possible warning should be given by the Northern Ireland administration to the NIO, and that there should be full co-operation in making available material to enable the NIO to brief the Secretary of State.

23. The NIO and the Department of Finance and Personnel will also work together to enable the Secretary of State to discharge as necessary his responsibilities under Sections 61 and 62 of the Northern Ireland Act 1998 (relating to advances by the Secretary of State and the preparation of accounts).

24. The Secretary of State will continue to represent Northern Ireland interests in Cabinet in discussions on the final determination of Public Service Expenditure and in situations where the Northern Ireland administration seeks additional funding during the life of any 3 year settlement. In all these circumstances, officials in the Northern Ireland administration will provide full information to the NIO to enable the NIO to advise the Secretary of State.

RELATED CONCORDATS AND OTHER ARRANGEMENTS

25. The Northern Ireland administration has established, or will establish, concordats with other UK Government departments.

These are separate, independent bilateral agreements, but are underpinned by the central intention of co-operation and joint working, as set out in the Memorandum of Understanding between the UK Government and the three devolved administrations (see paragraph 2 above).

26. The two administrations recognise the need for constituent parts of the Northern Ireland administration and the Northern Ireland Office to reach agreement on working practices or service provision in particular areas of work, and provides for such arrangements to be set out in one of a number of ways - as a concordat, an agreement, an exchange of letters or on a contractual basis, such as a service level agreement. Unless otherwise provided for, there will be no override of any arrangements already in place between the Northern Ireland Office and its Agencies and Northern Ireland Departments and their Agencies on specific work areas.

IMPLEMENTATION AND REVIEW

27. The implementation of the terms of this concordat is the responsibility of the Secretary of State and the Northern Ireland

Executive Committee. In order to assist them in that, appropriate standing arrangements will be made to monitor the smooth running of the relationship between the Northern Ireland Office and the Northern Ireland administration, particularly the areas covered by this concordat and those concordats and agreements flowing from it.

28. It is expected that any disputes which arise in relation to the operation of this and related concordats will be resolved at working level, including by reference to the machinery described in paragraph 27. If necessary, however, a dispute between a Northern Ireland department and the Northern Ireland Office could be referred to the Secretary of State and relevant Northern Ireland Minister(s). If agreement can not be reached, either party could request a meeting of the Joint Ministerial Committee, as provided for in the Memorandum of Understanding.

29. This concordat will be formally reviewed initially after one year and thereafter at five yearly intervals. A review may however be held at any time at the request of either party.



Treasury Chambers, Parliament Street, London, SW1P 3AG
0171-270 5000

3 December 1999

foxed
The Rt Hon Donald Dewar MSP
Scottish Executive
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

f
TOP (circled)
cc: JJA
CS
PH
PU

JOINT MINISTERIAL COMMITTEES

As you know the Prime Minister and I attach great importance to partnership working between the devolved administrations and the United Kingdom Government. The Memorandum of Understanding between us provides for us to set up joint Ministerial Committees to look at matters of common interest, and we have already announced that we intend to do so. I propose that we have Ministerial Committees on poverty and on the development of the knowledge economy.

We must get ahead now to do this, and while the formalities of setting up the Joint Committees are being taken forward, I would be grateful if you could confirm that you would be available to come to a scene-setting meeting of the Joint Ministerial Committee on Poverty at 9.00 am on Thursday 9 December here in London. I would hope at that meeting we could take a presentation by Alistair Darling on the UK Government's anti-poverty strategy, and would welcome contributions from you, and from colleagues in the other devolved administrations, on how we can all work together on this issue. Treasury officials would also present material on the Government's approach to child poverty. This would help us to develop a useful work programme and resolve on appropriate membership and Terms of Reference.



At this first meeting, I would envisage on the UK side that I would chair and be accompanied by Alastair Darling and the three territorial Secretaries of State, John Reid, Paul Murphy and Peter Mandelson.

Please let me know which of your Ministerial colleagues you would wish to bring with you on this occasion.

I am copying this letter to Alun Michael with the same invitation.

I am also copying this letter to David Trimble. I know that the new administration in Belfast will not yet have had the opportunity to consider the Memorandum of Understanding, but I hope that David will feel able to attend or be represented at this scene-setting meeting nevertheless.

Copies also go to the Prime Minister, Alistair Darling, members of DP and to Sir Richard Wilson.

Rankeene

P.P. GORDON BROWN

[Approved by the Chancellor and signed in his absence.]



Deputy Prime Minister
and
Secretary of State
for the Environment,
Transport and the Regions

6th Floor, Eland House,
Bressenden Place, London
SW1E 5DU

Tel: 0171-890 3011
Fax: 0171-890 4399

Top: 05

cc: 334
PJ

f

4

PRIME MINISTER

JOINT ACTION WITH DEVOLVED ADMINISTRATIONS

ppu pl :
attached.

Thank you for circulating your letter of 1 December to Gordon Brown on this important issue. It is essential that we are all clear about the arrangements for working together and I welcome the confirmation you have provided on the way forward.

The agreed framework for the Joint Ministerial Committee and its off-shoots provides a sound basis for joint working, while making it clear that these are forums for consultation and information-sharing, rather than decision making, which is properly the responsibility of the UK Government, or indeed of the devolved administrations. It is also essential, as your letter indicates, to ensure that the lead Whitehall Departments are fully locked into these arrangements, for these groups and for the JMC arrangements more generally.

I welcome specifically the establishment of the two new groups which Gordon has proposed. These deal with key priority areas for the Government, and will be valuable additions to the existing structures for co-operation with the devolved administrations.

Given my Department's wide-ranging interests in matters such as housing and regeneration, our specific responsibilities in relation to the English Regions, and Hilary Armstrong's role as lead Minister for social exclusion, I think we would be able to make a significant input to the work of the JMC (Poverty). I should be grateful if we could be included in its membership.

I am copying this to Gordon Brown, Derry Irvine, David Blunkett, Alastair Darling, Stephen Byers, John Reid, Paul Murphy, Peter Mandelson, Patricia

Hewitt, and Sir Richard Wilson. I am also copying this to Donald Dewar
and Alun Michael.

A handwritten signature in black ink, consisting of stylized initials that appear to be 'JD'.

JP
2 December 1999



10 DOWNING STREET
LONDON SW1A 2AA

File

**SUBJECT
MASTER**

Filed on:

THE PRIME MINISTER

CHANCELLOR OF THE EXCHEQUER

JOINT ACTION WITH DEVOLVED ADMINISTRATIONS

Thank you for your minute of 26 November.

In principle I think that what you propose is sound, subject to a number of points.

I think the best way of taking your proposals forward would be to set up two new groups which would be functional variants of the Joint Ministerial Committee along the lines which we have already established for Europe. The groups would not be "Cabinet Committees" - the devolved administrations are not part of the UK Government and do not take part in the Cabinet Government of the UK. Their central purpose would be to share information on relevant policy issues and best practice and to help develop a shared understanding and analyses of the key policy challenges.

One of the groups would be JMC (Poverty) which could cover the issues you raise on child poverty and on pensioners. I think it would be helpful if you would take on the chairmanship, with Alastair Darling as your deputy, given his lead role in the UK's anti-poverty strategy. The secretariat would be drawn from each of the devolved administrations including Northern Ireland, plus one each from the Cabinet Office (with responsibility for attending the meetings and notetaking), the Treasury and the DSS.

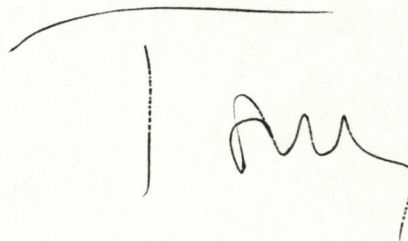
J

The other group would be JMC (Knowledge Economy) which would be responsible for the matters in your third paragraph. Here again I see advantage in your taking on the chairmanship, with Patricia Hewitt as your deputy, in view of her responsibility for advising me on e-strategy. The secretariat would be as before, with DTI instead of DSS.

Not all devolved administrations would be expected to attend all meetings of these groups - attendance would be limited to those involved in the subject under discussion in the normal way.

However, setting up the groups will of course require the agreement of the three devolved administrations before you can announce them. I would be grateful if you could enter into consultations with the administrations, and with the departmental Secretaries of State and the territorial Secretaries of State, for this purpose.

I am copying this minute together with your minute to John Prescott, Derry Irvine, David Blunkett, Alastair Darling, Stephen Byers, John Reid, Paul Murphy, Peter Mandelson, Patricia Hewitt and Sir Richard Wilson. I am also copying it to Donald Dewar and Alun Michael.

A handwritten signature in black ink, appearing to be 'T. M.', with a horizontal line above the first part of the signature.

1 December 1999

RESTRICTED - POLICY

file



Treasury Chambers, Parliament Street, London, SW1P 3AG
020-7270 5000

30 November 1999

Jeremy Heywood
Principal Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1A 2AA

cc: OS
Pnt
PJ

Dear Jeremy,

JOINT ACTION WITH DEVOLVED ADMINISTRATIONS

The Chancellor was grateful for the Prime Minister's minute of earlier today. He agrees with his comments and will announce these new groups tomorrow.

As requested, we have confirmed these arrangements with the departments concerned, and also with the First Minister in Scotland and the First Secretary in Wales.

The position in Northern Ireland is, of course, slightly different, since the new devolved administration is not yet in place. We have discussed the proposal with the Secretary of State's office. They are happy for the announcement to go ahead, and will want Northern Ireland to participate fully in due course, although they recognise that in the early stages the groups are likely to focus primarily on Scotland and Wales.

I am copying this letter to Peter Unwin (DETR), Jenny Rowe (LCD), Mike Wardle (DfEE), Rod Clark (DSS), Antony Phillipson (DTI), Jayne Colquhoun (Scotland Office), Simon Morris (Office of the Secretary of State for Wales), Sarah Todd (Northern Ireland Office), Gaynor Jeffrey (DTI) and Sebastian Wood (Cabinet Office). I am also sending copies to Ken Thomson (Scottish Executive) and Anna Coleman (National Assembly for Wales).

Yours,

Tam.

TOM SCHOLAR
Principal Private Secretary



Secretary of the Cabinet and Head of the Home Civil Service

PRIME MINISTER

cc Quentin Thomas
Willy Rickett
David Brew
Alastair Campbell

JOINT ACTION WITH DEVOLVED ADMINISTRATIONS

--- I attach a draft reply to the Chancellor of the Exchequer's minute of 26 November, which sets out my advice and how I think you should proceed.

2. I have assumed that you will wish to appoint the Chancellor to chair the two JMC groups. If not, Alastair Darling and Patricia Hewitt would be the obvious candidates.

RW.

RICHARD WILSON

29 November 1999

GR
—

DRAFT MINUTE TO THE CHANCELLOR OF THE EXCHEQUER

JOINT ACTION WITH DEVOLVED ADMINISTRATIONS

Thank you for your minute of 26 November

In principle I think that what you propose is sound, subject to a number of points.

First, we need to be careful not to get into a position of putting UK policy into commission with the devolved administrations in the areas where you propose joint action. We need to be very clear about maintaining separate arrangements for determining UK policy collectively in the normal way before entering into discussions with the devolved administrations on delivery and coordination as you propose.

The issue of departmental membership of Cab/other for mins from the devolved bodies was considered before & rejected because they would not be bound by collective responsibility
For the same reason we need to avoid referring to the new groups as 'Cabinet Committees', which they clearly are not. The devolved administrations are not part of the UK Government and do not take part in the Cabinet Government of the UK. ~~The purpose of the~~

I think the best way of taking your proposals forward would be to set up two new groups which would be functional variants of the Joint Ministerial Committee along the lines which we have already established for Europe. Their purpose would be to ~~share~~ *exchange* information

central share
relevant on policy issues & that practice & to help develop & share
2) analyses *understanding of the key policy changes*

One would be JMC (Poverty) which could cover both the issues which you raise on child poverty and those on pensioners. I think it would be helpful if you would take on the chairmanship, with Alastair Darling as your deputy. The secretariat would be drawn from each of the devolved administrations including Northern Ireland, plus one each from the Cabinet Office (with responsibility for attending the meetings and notetaking), the Treasury and the DSS.

govern lia. to. D. etc. on the UK's
anti-poverty strategy

The other would be JMC (Knowledge Economy) which would be responsible for the matters in your third paragraph. Here again I would be content for you to take the chairmanship, with Patricia Hewitt as your deputy in view of her responsibility for advising me on e-strategy. The secretariat would be as before, with DTI instead of DSS.

see advice
re your taking on

Setting up these groups will of course require the agreement of the three devolved administrations before you can announce them. I would be content for you to enter into consultations with the administrations, and with the departmental Secretaries of State and the territorial Secretaries of State, for this purpose.

govern. if you can do

I am copying this minute together with your minute to Derry Irvine, Alastair Darling, Stephen Byers, John Reid, Paul Murphy, Peter Mandelson and Patricia Hewitt, and to Sir Richard Wilson.

^{Tube}
CONFIDENTIAL - PERSONAL

e/devolution slh



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

SEBASTIAN WOOD
CABINET OFFICE

DEVOLUTION: PUBLIC APPOINTMENTS

The Prime Minister has seen Sir Richard Wilson's minute of 22 November. He agrees that it would be sensible for him to speak to Donald Dewar and Alun Michael along the lines Sir Richard proposes, and is content for Sir Richard to speak in parallel to Jon Shortridge and Muir Russell.

OR

OWEN BARDER

29 November 1999

CONFIDENTIAL - PERSONAL



10 DOWNING STREET

10 DOWNING STREET



PM

Have you still agreed to

on -

We need R.I.C.D. Wilbur's

urgent advice before taking

it - further

The idea does sound good

but - principle, but it would

show further confusion to

create a new IT committee

chaired by Gordon. We have

two such overlap & duplication

as by strategy. far better

for first meeting to chair

Can we have a meeting with the
IT people to discuss the
issues and the way forward?

known. My biggest
concern is the
address. My biggest
concern is the
address. My biggest
concern is the

greatly better
than the
mechanism

This is the plan to reference the UK
by co-operating in the area of co-operation
between the UK and the mechanism
of the mechanism
of the mechanism
of the mechanism



PRIME MINISTER

JOINT ACTION: WORKING WITH THE DEVOLVED ADMINISTRATIONS ON CHILD POVERTY AND INFORMATION TECHNOLOGY

As you know, I have been considering how to take forward three of our most important priorities, to win the battle against child poverty, to tackle pensioner poverty, and to ensure that we as a nation take full advantage of the huge opportunities provided by developments in IT. I am writing with further details of the proposals we discussed.

In all three areas success depends on joint action and effective cooperation with the devolved administrations in Wales and Scotland and with Northern Ireland. For example, on child poverty, we as the UK Government decide on child benefit, child tax arrangements and levels of income support, while the Scottish Executive and Welsh Assembly decide on education, health and social services. We need to make sure that all these policies are mutually reinforcing, so that we can deal effectively with both the causes and the symptoms of child poverty. Similarly, on pensioners, we need the best possible co-ordination between UK government policy (on issues such as pensions and taxation) and issues where policy is devolved (such as housing, health and social services).

On IT, schools and colleges must provide the right skills to students and UK business must be in the forefront of developing the opportunities provided by e-commerce. Education and industrial support are devolved matters, but the tax arrangements governing e-commerce are reserved to the UK Government. Again, progress depends on joint action between the Government and the devolved administrations.



I believe we need to engage fully with devolved Ministers, in order to build a real partnership and achieve real success in confronting these key challenges. The focus should be on effective delivery of the policies and programmes that are already in place, not on fundamental redesign of our policies or new spending proposals. I would want to develop a shared understanding with the devolved administrations of how our policies can best be delivered and identify practical measures that could deliver significant improvements on the ground.

We could take this forward through an ad-hoc Ministerial group. However I think that it would make sense to use the mechanism of the Joint Ministerial Committee which is already in place. Ministerial Committees on child and pensioner poverty and IT could be established as sub-committees of the overarching JMC and supported perhaps by a joint Secretariat of Cabinet Office, Treasury and devolved administration officials. I understand that a sub-committee on Europe has already been proposed. The JMC's remit is to consider overlaps between reserved and devolved matters, and agree a way forward, so child and pensioner poverty and IT look to be very suitable subjects to be handled by JMC.

The Committees would of course include Donald Dewar and Alun Michael, and perhaps other devolved Ministers that Donald and Alun wished to involve. John Reid and Paul Murphy should also participate. I would also want to involve the relevant Ministers on the UK Government side, for example Alistair Darling in the child and pensioner poverty group.

When you and I discussed this we agreed to move forward quickly. Perhaps your office could now send a note to relevant UK and devolved Ministers, setting out what we have in mind. My officials and the Constitution Secretariat could then carry forward the arrangements.

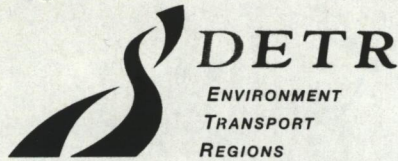
Tom Scholar

p.p. [G.B]

[Approved by the Chancellor of the Exchequer
and signed in his absence]

26 November 1999

FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND THE REGIONS



Margaret Hodge MBE MP
Department for Education and Employment
Sanctuary Buildings
Great Smith Street
LONDON
SW1P 3BT

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3000
FAX: 0171 890 4489

OUR REF: A/32278/99

OB
cc: CS
AK/F

25 NOV 1999

Dear Minister,

**SCOTTISH DEVOLUTION - REPEAL OF S28/2A OF THE LOCAL GOVERNMENT
ACT 1986**

Thank you for your letter of 29 October concerning Scottish Ministers' plans to repeal section 28 of the Local Government Act 1988 in their forthcoming Ethical Standards in Public Life Bill. I am sorry for not replying sooner.

I fully appreciate your concern that the Scottish Executive should not be seen to extend their competence in the area of equal opportunities. In the run-up to publishing the draft Scottish Bill and the related consultation paper, DETR officials have been liaising closely with DfEE officials to co-ordinate comments. Naturally, we will continue to do so as the Bill progresses through the Scottish Parliament.

Any change to the reservation of equal opportunities to the UK Government would require the consent of all DP Ministers, and I would expect DETR to support DfEE in resisting any encroachment upon the equal opportunities reservation. As DfEE leads on equal opportunities I would encourage you to raise any concerns you may have about the equal opportunities reservation directly with the Scottish Executive.

I am copying this letter to DP members, Dr John Reid and Sir Richard Wilson.

Yours sincerely,

Tom Wechale

HILARY ARMSTRONG
(Approved by the Minister
and signed in her absence)

ADVOCATE GENERAL FOR SCOTLAND

F



SCOTLAND OFFICE
DOVER HOUSE
WHITEHALL
LONDON SW1A 2AU

The Rt Hon the Lord Irvine of Lairg QC
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

CS
cc: JTH
PU

24 November 1999

Dear Derry,

DEVOLUTION TO SCOTLAND: FUTURE LEGISLATION AT WESTMINSTER

Thank you for your letter of 10 November which enclosed a final version of the Paper now entitled "Conferring Powers on Scottish Ministers in Legislation at Westminster".

I welcome the Paper as now drafted and am grateful for your taking on board the comments which I had made. I am happy that this version should be passed to the Scottish Executive and issued as a Devolution Guidance Note.

I note that you are seeking advice from Parliamentary Counsel on Alistair Darling's suggestion for possible further guidance identifying more fully the possible options where designation as a pre-commencement enactment is not the right solution. I agree that it is appropriate to seek such advice on what is essentially a drafting matter and that this should not hold up the issue of the Paper.

This letter is copied to the recipients of yours.

Yours sincerely
Lynda Clark

LYNDA CLARK



*Top-OS
CCPJ*

Scottish Executive
St Andrew's House
Regent Road
Edinburgh EH1 3DG

The Rt Hon Stephen Byers MP
Secretary of State for Trade and Industry
1 Victoria Street
LONDON
SW1H 0ET

Telephone: 0131-556 8400
scottish.ministers@scotland.gov.uk

23 November 1999

Dear Stephen,

BILATERAL CONCORDAT BETWEEN THE DEPARTMENT OF TRADE AND INDUSTRY AND THE SCOTTISH EXECUTIVE

Thank you for your letter of 22 November 1999 enclosing the draft bilateral concordat between your Department and the Scottish Executive. I am pleased that our officials have now agreed to the terms of the voluntary concordat which has evolved from detailed scrutiny and consideration at official level by the Scottish Executive and your department. The document is wholly consistent with the Memorandum of Understanding, over-arching concordats and other guidance on common working arrangements being agreed between the administrations.

I am delighted to endorse the concordat and hope you will take this letter as confirmation of our intent to abide by its principles. I can confirm that we intend to publish the concordat on Thursday 25 November.

I am pleased that there appear to be no particular areas of concern and hope that we can look forward to continued good working relationships in future years as in the past, only now underpinned by our concordat.

In due course our officials can give consideration to putting in place any necessary arrangements for monitoring the effectiveness of the concordat.

I am copying this letter to recipients of yours: the Prime Minister, members of DP, to Sir Richard Wilson and to Alun Michael.

Yours sincerely,

Donald Dewar
DONALD DEWAR

TAH00178.119





10 DOWNING STREET

PM

RW suggests you should encourage Donald D and Alan M to resist pressure for Parliamentary ratification of public appointments.

Knowing your views on this, I suspect you will agree. You are
—
r y t k.

BUT I should say that I disagree strongly: I think the exercise of patronage should be more open to scrutiny and accountability
—

The Select Committee on Public Administration published a report on Wednesday recommending confirmation hearings. Given this, and the pressure mentioned in Richards' note from the Scottish and Welsh Assemblies, do you want the Cabinet office to do some private thinking about possible



10 DOWNING STREET

evolution of the system,
avoiding politicisation and
Senate-type hearings?

No thank you!

This is the
competency of OWC
youth, Mr. These
hearings would be a complete
uplift man.



Secretary of the Cabinet and Head of the Home Civil Service

PRIME MINISTER

DEVOLUTION: PUBLIC APPOINTMENTS

Devolving responsibility for quangos, and appointments to quangos, has been one of the central planks of the Government's devolution programme. Variations in approach and procedures between Westminster, Edinburgh and Cardiff are therefore inevitable. However, as I said to you today at our bilateral, having talked to the Commissioner for Public Appointments about the latest developments, I wondered whether you might wish to discuss with Donald Dewar, and possibly Alun Michael, the extent to which there are benefits – both at Government level and for members of the general public – in keeping to a common approach, and in not introducing Parliamentary ratification of appointments. (I plan to speak to Jon Shortridge and Muir Russell in parallel.)

2. Both the Welsh Assembly and the Scottish Parliament contain members who are very interested in some form of Parliamentary procedure for ratifying public appointments. In Scotland, the SNP are committed to something close to Senate ratification procedures. The Scottish Executive are, I understand, planning to respond with propositions for a new Commissioner and Select Committee involvement in appointment processes.

3. We have, of course, consistently resisted this at Westminster, on the grounds that it is for Ministers to appoint and to account to Parliament for those appointments. Involving Parliament in the appointment process draws them into the business of the Executive and into a particular decision, which they are subsequently required to scrutinise.

4. There are risks in having different systems in different parts of the UK. Rigid and complex systems in Scotland and Wales would, of course, lead to calls for similar procedures here which are already regarded as cumbersome enough. Moreover, some new members of the devolved Administrations are looking for a much more politicised process which would devalue the public appointments process and the effort that we have put into making the selection on merit the key criterion. Above all, however, different systems and processes in different areas will confuse the public still further, at a time

when all the evidence is that the public appointments system is little understood and still regarded, certainly by those who have got first hand experience, with some suspicion.

5. While the UK Commissioner for Public Appointments still currently has responsibility for overseeing the process in both Scotland and Wales (and holds the separate Office of Northern Ireland Commissioner), the Scots are certainly considering changing this, and the expectation has always been that a Northern Ireland Assembly would soon wish to appoint its own Commissioner. The Commissioner's ability to require common principles - let alone consistent procedures - is therefore likely to be shortlived.

RJW

RICHARD WILSON
22 November 1999



file
- apprs.

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

**MS JAN POLLEY
CABINET OFFICE**

**RATIFICATION OF PUBLIC APPOINTMENTS
BY SELECT COMMITTEES**

The Prime Minister has seen Sir Richard's minute of 9 January which provided helpful advice on this matter. He strongly agrees, for the reasons given by Sir Richard, that Select Committees should not be given confirmation powers in relation to appointments. However, he can see the advantage, as Alistair Darling has suggested, of not bringing this to a head now.

He wants therefore to indicate a slightly more negative position than the neutral stance so far adopted, but without yet definitively ruling out the option. In the context of the Bank of England Bill, he would prefer to stick to the line that, since this raises wider constitutional issues, it would be inappropriate to include provision in the Bank of England legislation before the House has properly had a chance to consider them. We should also indicate that we see some significant disadvantages in the proposal; but that we will keep the wider issue under review.

I am copying this letter to Paul Cohen (President of the Council's Office), Mark Taylor (Chancellor of the Duchy of Lancaster's Office) and Peter Schofield (H.M. Treasury).

MR

**ROB READ
20 January 1998**

From: Rob Read
Date: 16 January 1998

PRIME MINISTER

cc: Alastair Campbell
Jonathan Powell
Jeremy Heywood

**CONFIRMATION OF PUBLIC APPOINTMENTS BY SELECT
COMMITTEE**

The Government needs to agree a line to take on confirmation of public appointments by select committees. This question has been raised by report from Treasury Select Committee who are pressing for this in the context of appointments to the Bank of England Monetary Policy Committee. The issue is likely to be raised on Thursday 22 January during the remaining stages of the Bank of England Bill when amendments on this matter are likely to be put by the opposition.

Advice from Sir Richard Wilson is below. The bottom line is that he advocates explicitly ruling out any such role for select committees, and doing so by written PQ before Thursday.

I agree

Sir Richard's advice is almost certainly the right way to go in the long-term. But there are good party political reasons for not moving too quickly on this. In June, Ann Taylor, with No 10 support, suggested publicly that this idea was one worth considering, which was a line taken before the Election. It is probably better not to rubbish immediately what was said then and in opposition.

RESTRICTED - POLICY

- 2 -

The way through this now might be to signal a more negative position than the present line - which is that we will review the possibility of ratification of appointment - by making clear that:

- we can see some benefits, but some significant disadvantages in the proposal;
- since this raises wider constitutional issues, it would be inappropriate to include provision in the Bank of England legislation before the House has properly had chance to consider them; and
- we will be looking at the best way to consider this issue further.

We can invite Sir Richard to advise further on different possible review mechanisms.

This approach is consistent with the position that Alastair Darling and Ann Taylor had been inclined to take in exchanges on this issue around Xmas. I understand from their offices that they are still inclined to remain neutral (open minded, rather than expressing any negative views) and play this long, to avoid creating a target for the opposition in the debates on the Bill.

RKR

OK but 2 really
think it would be mad to
go down this path. ✓



Ref. AO98/31 *Secretary of the Cabinet and Head of the Home Civil Service*

ROB READ

RATIFICATION OF PUBLIC APPOINTMENTS BY SELECT COMMITTEES

Issue

The Treasury Select Committee (TSC) is pressing for a role in confirming appointments to the new Bank of England Monetary Policy Committee. Treasury Ministers need a line to take on whether it should have this role.

Timing

2. The Bank of England Bill starts its Report stage some time after 19 January. The Government needs to agree a line on this issue by then.

Recommendation

3. Giving a Select Committee a statutory power to confirm appointments, even for these few appointments, would be a significant step. It could:

- i. politicise the appointments process, with Parliament using ratification hearings to express a verdict on Government policies;
- ii. deter potential candidates;
- iii. be a slippery slope leading to pressure for confirmation of other public appointments, even of Ministers.

4. My advice is to stick to the Nolan approach of making appointments on the basis of merit and leave the monitoring of appointments to the independent Commissioner for Public Appointments rather than give a

formal confirmation role to Select Committees. Ministers are accountable to Parliament for the appointments which they make, and it would still be open to Select Committees, as at present, to summon new appointees to give evidence soon after appointment and to comment on the appointment or reappointment of particular individuals.

5. If you agree with this line it should be incorporated in the Treasury's response to the TSC report on the Bank of England proposals and in briefing for the Bank of England Bill.

Background

6. The President of the Council floated in a speech last June the possibility of giving Select Committees a role in ratifying a small number of public appointments. The TSC has used this to press the Government to give it a role in confirming Bank of England appointments. The Government has said so far that it 'will review the possibility of ratification of certain appointments by Select Committees, but has no immediate plans to recommend this'. An agreed line is needed in time for the Report stage of the Bank of England Bill some time after 19 January.

Options

7. The TSC argue that a power to confirm appointments to the Bank of England would increase the accountability of the Bank to Parliament and be in line with the fact that decisions on interest rates have been passed to the Bank. It would also however cut across Ministerial responsibility for appointments and bring with it a number of difficulties:

- i. potential candidates could well be deterred, particularly given the risk that hearings might stray into candidates' private lives. This would run counter to the Nolan principle of appointment on merit;

RESTRICTED - POLICY

ii. potential politicisation of hearings, with Parliament using ratification hearings to express a verdict on Government policies. This could in turn provoke difficult stand-offs where Government was not prepared to accept the recommendation of the Select Committee;

iii. it would complicate and lengthen the appointments process (legislation might also be needed);

iv. once the principle of ratification had been established, Select Committees would be likely to press for increased powers in relation to other appointments. It is not easy to distinguish the case for confirmation hearings for Bank of England appointments from a wide range of other appointments including perhaps even appointments to Ministerial office.

8. The arguments were reviewed by the Nolan Committee in their First Report. They came down clearly in favour of appointment on merit and ruled out at that stage a role for Select Committees in favour of the appointment of an independent Commissioner for Public Appointments. The Government's Consultation Paper on Quangos, issued in the Autumn, proposes extending the remit of the Commissioner.

9. Against this background, I recommend that the Government should make it clear now that it does not consider that a formal ratification role for Select Committees is compatible with Ministerial responsibility for making those appointments. Select Committees already have power to call any holders of public office to give evidence, and to make recommendations on their continuing appointment. Select Committees regularly call newly appointed individuals to give evidence on the range of their responsibilities. But the responsibility for making the appointments remains with Ministers and they should answer for the appointments they have made.

~~RESTRICTED - POLICY~~

9. An alternative option would be to ask the Committee on Standards in Public Life to look at the issue again. This could be presented as addressing the concerns of Parliament seriously, although it could also be misconstrued as kicking the issue into the long grass. However, I see considerable advantages in dealing with the issue clearly now rather than risking delay and a possible "compromise" outcome.

Conclusion

10. If you agree that the Government should rule out confirmation powers for Select Committees now, this should be reflected in the Treasury's response to the TSC Report on the Bank of England proposals. The Government would make it clear that the proposed extension of the powers of the Commissioner for Public Appointments, in line with recommendations from both the Committee on Standards in Public Life and the Commissioner himself, will provide an additional check on the public appointments process and that it does not support the proposal for a Select Committee role. In practical terms, it would be helpful to arrange a PQ making clear the Government's general position, to which the Treasury could refer in their TSC Response.

11. I am copying this minute to the President of the Council, the Chancellor of the Duchy of Lancaster and the Chief Secretary.

R.W.

RICHARD WILSON

9 January 1998

COVERING RESTRICTED

The Rt Hon Stephen Byers MP
Secretary of State for Trade and Industry

FAXED



Top:ob
cc: [signature]

The Rt Hon Donald Dewar MP MSP
First Minister
Scottish Executive
St Andrew's House
Regent Road
Edinburgh EH1 3DG

1 cc Jack
Pat McF.
2 rtm.

Secretary of State
Department of
Trade and Industry

1 Victoria Street
London SW1H 0ET

Direct line
0171 215 6272

DTI Enquiries
0171 215 5000

e-mail
TLO.Byers@tlo.dti.gov.uk

22 November 1999

Dear First Minister,

BILATERAL CONCORDAT

I enclose a proposed draft of a bilateral concordat between DTI and the Scottish Executive for you to consider.

Following the publication of the Memorandum of Understanding and overarching concordats, our officials have discussed the content of a bilateral concordat to set out in more detail arrangements for communication and co-operation between DTI and the Scottish Executive. I have been encouraged by the good working relationship between officials at this early stage in the life of the Scottish Executive and trust that the concordat will help foster good practice.

At this stage, I am submitting the proposed draft to you in confidence. I should be grateful if you would treat it in accordance with its security classification until we agree that it should be more widely available and our officials agree the manner for publicising it. I would want to make the final draft available to the UK Parliament at the same time as you lay it before the Scottish Parliament. I understand this is likely to be on 25 November.

I am copying this letter to the Prime Minister, members of DP and to Sir Richard Wilson. A copy also goes to Alun Michael.

Yours sincerely, [Signature]

STEPHEN BYERS

*Approved by the Secretary of State
and signed in his absence*

dti

Department of Trade and Industry

RESTRICTED

19 November 1999

DRAFT

CONCORDAT BETWEEN THE SCOTTISH EXECUTIVE (SE) AND THE DEPARTMENT OF TRADE AND INDUSTRY

CONTENTS

PARAGRAPH

Introduction & context	1
Nature of Concordat	3
Structure of Concordat	5
Definition	7
Objectives for each category of matter	8
Access to Services	17
Publicity campaigns	18
Notice of and planning for meetings	19
Cross-border public authorities	20
Dispute Resolution Mechanisms	21
Review and Renewal of Concordat	24

Annexes

INTRODUCTION

1. The way in which the UK is governed has changed in a major way through the devolution settlements to Scotland, Wales and Northern Ireland. Devolution to Scotland, effected by the Scotland Act 1998, has changed the way in which Scotland is governed by creating a Scottish Parliament with devolved powers within the United Kingdom. Executive power in devolved areas is exercised by the Scottish Ministers, while the UK Government at Westminster has retained direct responsibility for reserved matters, as listed in Schedule 5 to the Scotland Act 1998. In this context, DTI and the SE operate in a number of linked and related areas and this concordat addresses relationships on these matters. This concordat is made between the Scottish Executive ("SE") and the Department of Trade and Industry ("DTI").

2. The purpose of this concordat is to provide a framework for working arrangements between DTI and the SE. The principal aim in producing the framework is to establish and maintain good working relationships between DTI and SE. This will include, as far as possible, maintaining pre-devolution arrangements for exchange of information and co-operation, including on new legislation and new policies. The responsibilities of the SE and DTI include the work and interests of bodies which they sponsor.

NATURE OF CONCORDAT

3. This concordat is a voluntary arrangement between the SE and DTI. Its purpose is to set the ground rules for administrative co-operation, exchange of information, advance notification and joint working, including the provision of support services on terms agreed between the parties. It does not create legal obligations or restrictions on either party.

4. The concordat operates within the overarching Memorandum of Understanding (MOU) which sets out common principles and practices which will underlie relations between the UK Government, the Scottish Ministers and the Cabinet of the National Assembly for Wales. DTI and the SE will implement the practices set out in the MoU and abide by the spirit of that Memorandum. This concordat should be read in conjunction with the MoU, and the overarching concordats on EU policy issues, international relations and the provision of statistical advice and information throughout the UK, and any procedures agreed between the administrations on common working arrangements.

STRUCTURE OF CONCORDAT

5. The main body of this concordat specifies general working arrangements between DTI and the SE

6. There are also a number of annexes. Each of these contains additional arrangements which are required for specific subject areas (or groups of subjects). These may specify day-to-day working practices designed to meet the objectives of the main body of the concordat or additional arrangements agreed between the two administrations in specific subject areas

DEFINITION

7. In this document, a "reserved" matter is a matter listed in Schedule 5 to the Scotland Act 1998 and a "devolved" matter is any other matter. "Concurrent," and "executively devolved" are as described in relevant paragraphs below.

OBJECTIVES FOR DIFFERENT CATEGORIES OF MATTERS

8. Working arrangements necessarily differ for each of the four categories of matters identified. Each category is considered in turn below. DTI and SE recognise that neither has a monopoly on good ideas and both affirm their willingness to give and receive constructive suggestions and to keep each other advised of how such suggestions have been handled.

Devolved Matters

9. For devolved matters, SE will formulate and implement policies for Scotland.

10. When initiating and developing policies in relation to devolved matters, SE will ensure that, where relevant, the DTI is informed and consulted in good time and in adequate detail about proposals before they are made public. If DTI has views on such initiatives and developments, these will be communicated in good time to the lead SE Division to allow them to be taken into account when formulating Scottish policy. In cases where proposals have not been made public, DTI will keep information provided by SE confidential.

Reserved Matters

11. For reserved matters, DTI will continue to formulate and implement policies for Scotland (and other parts of the UK where functions have not been devolved).

12. When initiating and developing policies in relation to reserved matters, DTI will consider the needs of those parts of the UK/GB which will be affected. As part of this process, DTI will ensure that, whenever relevant, the SE is informed and consulted in good time and in adequate detail about proposals before they are made public. This is particularly important for developments which will have an effect on devolved matters. If the SE has views on such initiatives and developments, these will be communicated in good time to the lead DTI Directorate to allow them to be taken into account when formulating UK policy. In cases where proposals have not been made public, SE will keep information provided by DTI confidential.

Interaction between Devolved & Reserved Matters

13. There are areas where there are interactions between devolved and non-devolved matters (for example, functions relating to planning and energy supply). DTI and the SE will hold frequent discussions in order to:

- ensure that both parties keep abreast of developments in policy and legislation in areas where there is, or could be, an interaction, including in relation to relevant local government and enforcement activities and responsibilities;

DRAFT

- consider co-ordination of activities where this would be of mutual interest;
- identify when DTI legislation could have an impact on a devolved matter and to ensure that consultation takes place between the administrations;
- identify when action by the SE could have an impact or effect beyond the matter devolved and to ensure that consultation takes place between the administrations.

Concurrent Powers

14. Both UK Ministers and the Scottish Ministers will be able to exercise in or as regards Scotland powers listed in section 56 of the Scotland Act, including under:

- section 9 of the Industrial Organisation and Development Act 1947 (levies for scientific research, promotion of exports, etc.);
- section 5 of the Science and Technology Act 1965 (funding of scientific research);
- section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in respect of mineral exploration);
- sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations);
- sections 7 to 9 and 11 to 13 of the Industrial Development Act 1982 (financial and other assistance for industry);
- Export Promotion (specified in an Order under section 56 of the Scotland Act).

15. DTI and the SE will consult each other on policy developments and activities in these areas to avoid duplication of effort, including double funding of activities, and to avoid unintentional contradictory actions.

Executively Devolved

16. Some matters are reserved to DTI at a policy or legislative level but administration is carried out by the SE. In some cases, the functions include making or agreeing secondary legislation. Such matters are listed in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/1750). DTI policy makers and SE administrators will need to have effective working relationships. This will require keeping abreast of developments, ensuring that DTI policy makers in the reserved area and the SE administrators have a good understanding of each others objectives and take account of them, in particular, where they impact on each other.

ACCESS TO SERVICES

17. The SE and DTI may provide each other with administrative, professional or technical services.

PUBLICITY CAMPAIGNS

18. In planning publicity campaigns relating to matters of mutual interest, DTI and the SE will inform each other of their intentions and consider whether it would be beneficial to have a joint or co-ordinated campaign. Current practice on the supply of literature printed by DTI will continue as at present.

NOTICE OF, AND PLANNING FOR, MEETINGS

19. Where appropriate, DTI and the SE will each give adequate notice of meetings with external contacts in which there will be a discussion of topics likely to impact on the responsibility of the other and will consult on lines to take. Following meetings, DTI and the SE will provide a copy of the minutes or other record of such a meeting, together with details of any action it is proposed to take as a result of the meeting.

CROSS BORDER PUBLIC AUTHORITIES

20. The Scotland Act allows Cross-Border Public Authorities to be specified by an Order in Council. Such bodies have functions which are exercisable in or as regards Scotland and may relate to reserved, devolved or a mixture of both functions. Specific arrangements may be put in place for such bodies by means of an Order in Council under section 89 of the Scotland Act.

DISPUTE RESOLUTION MECHANISMS

21. The vast majority of matters should be capable of being handled routinely among officials from the appropriate Directorates of the DTI and Divisions of the SE. If further discussion is needed on any issue, the matter may be referred to senior officials or discussed bilaterally at political level. Where a dispute cannot be resolved bilaterally, the Scotland Office may be called upon to assist. The Secretariat of the Joint Ministerial Committee may also be consulted. If this does not result in agreement, a meeting of the Joint Ministerial Committee can be called to resolve any differences which remain, as described in the MoU.

22. Such discussions will not prevent the SE from acting in areas which are clearly devolved and will not prevent DTI from acting in areas which are clearly reserved.

23. It is recognised that a dispute resolution mechanism involving third parties will not be appropriate in all cases, for example, where commercially confidential and market sensitive information is involved.

REVIEW

24. Changes to this concordat can be made only with the agreement of both parties. In line with the terms of the MOU it is agreed that the concordat will be reviewed a year after it has been signed.

ANNEXES

- A. Industrial Development Act 1982
- B. State Aids Policy and Notification
- C. Competition Casework
- D. Committee on Overseas Promotion
- E. Insolvency Act 1986
- F. Energy

INDUSTRIAL DEVELOPMENT ACT 1982

1. The DTI will consult in good time and in adequate detail with the SE on matters related to the Industrial Development Act 1982 ("the Act") which are of joint concern, as provided for in the Memorandum of Understanding. The SE will consult in good time and in adequate detail and provide information to the DTI on measures which may have implications for the GB and UK wide provisions of the Act, including potential European State aid implications.
2. For the purposes of the Act, DTI and the SE note that:-
Designation of Assisted Areas under Section 1 is a reserved matter under Schedule 5 to the Scotland Act 1998. The Regional Selective Assistance scheme (RSA), providing for grants to companies, operates under Section 7 of the Act and is confined to the Assisted Areas of GB".
3. DTI and SE will advise one another on consideration of policy changes which will affect the future operation of the RSA scheme and also provide opportunity for discussion.
4. The DTI and the SE will operate and observe common RSA Guidelines. Changes to the Guidelines will be agreed by the DTI and the SE. The Guidelines and discussions on the Guidelines will be confidential. Training of RSA appraisal and monitoring officers will be to common standards, and DTI will continue to take the lead in providing training in RSA practice and procedure.
5. The DTI will notify the SE of its [and other Departments] expenditure and forecast expenditure under section 8 of the Act, to ensure that the statutory limit is not exceeded. The SE will similarly notify the DTI of expenditure and planned expenditure under section 8 of the Act.
6. The DTI will consult the SE before an Order is made by the Secretary of State to raise the statutory limit (section 8(5)). DTI will determine whether the intention to increase the statutory limit should be notified to the European Commission.
7. The DTI will consult the SE before new programmes or schemes are made under section 8 powers which have GB wide or UK application
8. The SE will consult the DTI to in good time and in adequate detail on any measure under the Act which may require prior notification under European Commission State Aid regulations.
9. The SE will provide the DTI with timely information so that the Industrial Development Act 1982 Annual Report may be laid before Parliament and published within six months of the end of the financial year (section 15 of the 1982 Act). The DTI will consult the SE on the draft Annual Report.

Note: The principles for handling large mobile investment proposals throughout the UK are set out in the separate **Concordat on financial assistance to industry**, which are supported by a separate set of guidance documents.

EUROPEAN COMMUNITY STATE AID RULES

1.0 Principles

1.1 The European Commission has considerable powers to monitor, control and restrict the forms and levels of aid given by all Member States to their industries. The principles underlying State aid are set out in Articles 87 & 88 EC. Detailed guidance on State aid rules can be found in "European Community State Aids: Guidance for all Departments and Agencies" and the various frameworks and guidelines issued by the Commission on the application of the rules. All State aid (other than that covered by de minimis provisions) must be notified to and approved by the Commission in advance of implementation, otherwise it is illegal.

2.0 Responsibility

2.1 Relations with the European Union are the responsibility of the UK Parliament and Government. The Department of Trade and Industry's State Aid Policy Unit co-ordinates UK policy on state aid, providing advice on the application of the state aid rules, and assisting in UK notifications to the Commission ¹.

3.0 Policy

3.1 The State Aid Policy Unit will consult the SE within a reasonable timescale on State aid policy issues. The SE will respond within a reasonable timescale to enquiries received from the State Aid Policy Unit and/or UKREP on actual or potential State aid measures or on consultation about new policy developments.

4.0 Notifying Schemes or Projects

4.1 All notifications will be submitted through the State Aid Policy Unit². The SE will produce (in consultation with DTI's State Aid Policy Unit, Cabinet Office, FCO, UKREP and other Government departments as necessary) the notification and a covering letter to the Commission. Once agreed, the notification and letter will be sent by the State Aids Policy Unit to UKREP who will submit it to the Commission Secretariat General and copy it to the SE. The State Aid Policy Unit will relay to the SE the Commission's decision (which is likely to be around three months from date of notification) together with any conditions attached to that decision.

¹DETR and MAFF take forward notifications on UK State aid in the specialist sectors of transport and agriculture and fisheries respectively

²Except transport, agriculture and fisheries: see footnote 1 above.

DRAFT

4.2 All Member States are under a strict obligation to notify a proposed aid within the scope of Article (87) 1 EC. When considering cases where notification may not be required, the SE can seek advice from the DTI's State Aid Policy Unit on whether the existing derogations are relevant - this may include the Unit/UKRep consulting the Commission to allay any doubts.

4.3 Having obtained Commission approval, it is normally necessary to produce an annual report on the operation of the scheme of assistance/individual award of aid for each financial year. Reports will be sent to DTI's State Aid Policy Unit by the end of May following the end of each financial year.

5.0 Communications with the EC

5.1 The SE will channel communications with the European Commission on State aid issues through DTI's State Aid Policy Unit, which in turn is responsible for onward transmission to UKREP in Brussels (UKREP is responsible for onward transmission to the EC). Such communications may, for example, concern notifications of new aid and Commission enquiries about existing aids, or developments in Commission policy towards particular types of aid. DTI's state aid policy unit will copy to officials in the devolved administrations correspondence with the commission and UKREP on state aid issues that have application throughout the UK and in particular will keep SE fully informed of all issues which could have an impact on State aids on Scotland. Informal contacts between SE and the Commission are of course not excluded but they should be discussed and agreed with DTI's State aid policy unit and UKRep beforehand to ensure that there is consistency of approach, in the best interests of the aid concerned. Past experience has shown that informal representations are often best made by UKRep or at meetings with DGIV officials at which the lead Department wanting to provide the aid, the State aid policy unit and UKRep are all present to put the case.

6.0 Confidentiality

Consistent with the UK's obligations under the State aid procedural regulation not to disclose information covered by the obligation of professional secrecy (Article 24 of Regulation 659/99/EC), the DTI and SE shall respect the confidentiality of exchanges between the UK and the Commission, and both the DTI and the SE shall respect the confidential nature of individual cases.

COMPETITION CASEWORK

Objectives:

- To set out the roles and responsibilities of the Department of Trade and Industry (DTI) and the Scottish Executive (SE) in relation to UK and EC competition casework.
- To confirm that the SE will be consulted on competition cases where appropriate.

DTI will:

- Keep the SE informed with adequate detail and to a reasonable timescale about competition cases where there is a Scottish interest.
- Where appropriate, consult the SE about correspondence on competition cases or general competition inquiries with a Scottish interest.
- Where appropriate, offer competition policy advice to the SE.
- Give due and proper weight to comments and views from the SE in cases where there is a Scottish interest.

SE will:

- Note that competition cases often involve tight timescales and little time may be allowed for comments on papers.
- Respect the commercially confidential and market sensitive nature of case papers, having particular regard to any non-disclosure obligations, in particular in section 133 of the Fair Trading Act, sections 55 and 56 of the Competition Act 1998, article 20 of Council Regulation (EEC) 17/62 and article 17 of Council Regulation (EEC) No 4064/89.

COMMITTEE ON OVERSEAS PROMOTION

1. The Concordat on Financial Assistance to Industry recognises the need for a co-ordinated approach to promotion of the UK and its constituent parts to foreign investors. Paragraph 14 of that Concordat says:

“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 Committee on Overseas Promotion, on which the Scottish Executive, the National Assembly for Wales and the Northern Ireland Executive will be represented.”

2. The Committee on Overseas Promotion keeps the relevant guidelines under review. Through their membership of the Committee the Scottish Executive, the National Assembly for Wales and the Northern Ireland Executive will be able to participate in consideration of and agreement to any changes to the guidelines.

INSOLVENCY ACT 1986

1. The DTI will consult to a reasonable timescale with the SE on matters related to the Insolvency Act 1986 which are of joint concern, as provided for in the Memorandum of Understanding. The SE will maintain adequate consultation with, and provide information to, DTI on measures which may have implications for the GB and UK wide provisions of the Act.

2. In particular, the Insolvency Service should consult the SE on proposed changes to insolvency law that affect Scotland. Similarly, the SE should notify the Insolvency Service of proposed changes to insolvency law in devolved areas (e.g. private law or criminal law). In addition there are specific provisions of the **Insolvency Act 1986** which are reserved, but on which the DTI should consult the Scottish Ministers before making orders on a UK-wide basis. Details are set out below:

Section 124(4): Power of the Secretary of State to petition for the winding up of a company

This function is exercised by the Secretary of State for Trade and Industry. The Secretary of State for Trade and Industry should notify the Scottish Ministers when the petition concerns a company either whose registered office is in Scotland or is deemed to be situated there. The notification should be made after a petition has been presented against the company.

Section 391 (1): The power of the Secretary of State, by order, to declare a body to be a recognised professional body for the purposes of section 391.

This function is exercised by the Secretary of State for Trade and Industry. The Secretary of State for Trade and Industry should consult the Scottish Ministers concerning the recognition of a professional body in Scotland.

Section 411 (1)(b), (2) and (5): The power of the Secretary of State to make rules in relation to Scotland in respect of company voluntary arrangements, administration orders and certain aspects of winding up.

This function is exercised by the Secretary of State for Trade and Industry. The Secretary of State for Trade and Industry should consult the Scottish Ministers concerning rules and, in the case of sub-section (5), regulations in relation to Scotland.

Section 416 (1) & 417: The powers of the Secretary of State respectively by order and by regulation to increase or reduce various money sums specified in the Act.

This function is exercised by the Secretary of State for Trade and Industry. The Secretary of State for Trade and Industry should consult the Scottish Ministers before adjusting the monetary limits and sums specified in the Act

Section 419: The power of the Secretary of State to make regulations for the purpose of giving effect to Part XIII of the Act (Insolvency Practitioners and their Qualification).

This function is exercised by the Secretary of State for Trade and Industry. The Secretary of State for Trade and Industry should consult the Scottish Ministers before making such regulation.

ENERGY ISSUES

General

1. Energy is a reserved matter, but many energy issues are of importance to Scotland and thus to the Scottish Ministers. For that reason, certain functions relating to energy matters have been "executively devolved" to the Scottish Ministers, enabling them to take certain decisions on energy matters within the framework of UK energy policy. In addition, the promotion of energy efficiency (other than by prohibition or regulation) is devolved, as is environmental regulation.

2. The energy industries in general, and particular companies in the energy field, are of key importance to the Scottish economy. Energy companies and activities located in Scotland are correspondingly important to the UK economy. Wider issues connected with the energy industries, including international negotiations, also have an impact on Scotland, while DTI continues to need advice on Scottish energy issues when considering UK energy policy. All of these considerations will require DTI Energy Group and Energy Division of the Scottish Executive (SE) to communicate and consult closely. It may sometimes be necessary for Energy Division to consult widely within SE on energy policy matters which have broader (e.g. environmental) implications, and Energy Division is DTI's initial point of contact with SE on all such broader energy matters.

Electricity

3. The generation, transmission, distribution and supply of electricity in Scotland is reserved. However the powers and duties under electricity legislation listed in Appendix 1 are the subject of executive devolution (under SI 1999/1750); the most significant relate to consents for power stations and overhead electricity lines, renewable energy and the associated fossil fuel levy. Before carrying out any of these powers and duties, SE will consult DTI on those which may have wider GB application or which may set a precedent. Likewise DTI, in discharging any powers or duties under electricity legislation, will consult SE where there would be implications for Scotland.

4. In addition, powers to license generation or supply of electricity in Scotland; to issue a general authority to the Director General of Electricity Supply to grant licences; and to grant exceptions from the need to hold a licence are exercisable by DTI Ministers only after consultation with the Scottish Ministers (as set out in SI 1999/1750).

Nuclear Energy

5. Nuclear energy and nuclear installations are reserved matters. Some functions (specified in SI 1999/1750) under the Nuclear Installations Act 1965 of making orders and regulations are exercisable by DTI Ministers only after consultation with the Scottish Ministers. Other administrative functions in relation to civil nuclear site licenses and permits and regarding liability for compensation for nuclear incidents, are the subject of executive

devolution to SE, while planning for emergencies at civil nuclear sites in Scotland is the administrative responsibility of SE.

6. The duties of the Scottish Environment Protection Agency (SEPA) in relation to the keeping and use of radioactive material, the disposal or accumulation of radioactive waste and the regulation of non nuclear activities at nuclear installations in Scotland are devolved.

7. The Scottish Ministers take a very close interest in the nuclear industry, not least because British Energy is based in Scotland, and both UKAEA and BNFL have sites in Scotland. DTI will therefore consult SE on nuclear energy policy which may have an impact in Scotland. Since DTI Ministers are accountable to the UK Parliament for nuclear safety in Scotland, while SE wants to keep the Scottish Parliament fully informed on nuclear matters, in particular safety, working arrangements will be put in place between DTI, SE and HSE, as the regulator of nuclear safety throughout the UK, relating particularly to the handling of any on-site incidents and any off-site emergencies.

8. Planning for off-site civil nuclear emergencies is the responsibility of DTI in England and Wales and of SE in Scotland. There will be full consultation between DTI and SE to ensure continued consistency of approach throughout GB, and to maintain procedures to deal with any nuclear accident at a civil nuclear site

9. DTI will consult SE on EURATOM and other international nuclear matters insofar as they have implications for Scotland.

Oil and Gas

10. Oil and gas are reserved matters, although environmental regulation up to the 3 mile offshore limit is devolved. In addition, powers over land based operations in support of offshore oil and gas operations under the Offshore Petroleum Development (Scotland) Act 1975, and functions under the Pipe-lines Act 1962 relating to approval of land based pipe-lines beginning and ending in Scotland, are executively devolved under SI 1999/1750.

11. Because the offshore oil and gas industry is of great importance to Scotland, DTI will discuss with and consult SE on all oil and gas issues which have implications for Scotland, including new licensing rounds, pipeline consents, field approvals and related developments. In addition the devolution of fisheries and environmental regulation require the early exchange of information on any oil and gas developments which will have an impact in these areas. Likewise, DTI will be consulted on all environmental proposals being considered by SE which could have an impact on the oil and gas industry. DTI will continue to be consulted with full weight given to their views in the decision making process following planning appeals and called-in planning applications relating to development by public gas transporters.

12. Generally, liaison on oil and gas issues will be between DTI and Energy Division of SE. However DTI will liaise with the Scottish Executive on offshore and fisheries issues and with The Scottish Executive Development Department on planning appeals and called-in planning applications relating to development by public gas transporters. In addition, the

DRAFT

Head of SE's Energy Division will continue to chair the Fisheries and Offshore Oil Consultative Group.

13. In international negotiations on oil and gas issues in which DTI take the lead, it will consult SE fully on the Government's aims, negotiating strategy, and impacts of the possible outcomes from any negotiations.

14. DTI will be consulted by SE about all proposals relating to Scots civil and criminal law which may have a particular impact on off-shore activity.

Statistics

15. DTI collects a variety of statistics in relation to the energy industry. The SE will (a) have access to statistics produced by DTI, subject to appropriate confidentiality safeguards; (b) consider whether there are any specific requirements for statistics relating to Scotland, and agree with DTI how they should be compiled and any resulting resources implications; and (c) be consulted on any proposed changes to the type of statistics collected, method of collection or presentation of figures.

16. SE will consult DTI on any statistics it collects and publishes to ensure comparability with statistics for the UK.

RESTRICTED

19 November 1999

DRAFT

APPENDIX 1

1. The electricity functions administratively devolved to the Scottish Ministers include:-
 - 1.1 joining together of 2 consumer committees, and being consulted by the Director on appointment of the chairman of a committee;
 - 1.2 promotion of renewable energy;
 - 1.3 levying electricity suppliers to pay for the promotion of renewable energy;
 - 1.4 directing generating stations as regards fuel stocks to be held;
 - 1.5 requiring transmission operators to operate in a specified matter;
 - 1.6 granting consent for new power stations of over 50MW capacity (1MW for hydro stations), and varying the limits on capacity for this purpose;
 - 1.7 granting consent for new or upgraded overhead electricity lines;
 - 1.8 making regulations on environmental assessment of electricity applications;
 - 1.9 causing a public inquiry to be held into electricity applications for consent;
 - 1.10 conjoining 2 or more enquiries;
 - 1.11 authorising an electricity licensee to purchase land compulsorily;
 - 1.12 granting necessary wayleaves; making orders relating to felling and lopping of trees;
 - 1.13 authorising persons to abstract and use water; and
 - 1.14 requiring a licensee to supply statistical information.
2. When carrying out these duties, the functions of the Scottish Ministers also include:-
 - 2.1 functions in respect of environmental assessment of electricity applications under the relevant regulations;
 - 2.2 a duty to exercise all the functions in a manner best calculated to achieve certain aims set out in the Electricity Act 1989, e.g. the protection of the interests of consumers of electricity in rural areas and the protection of the environment; and
 - 2.3 a duty when considering applications for consent of new power stations or overhead lines to have regard to amenity considerations; and duties relating to fisheries interests and the Fisheries Committee.



Foreign &
Commonwealth
Office

~~cc John Sawers~~
Jeremy Haywood
Roger Liddle

Clare

I think you lead

on this

Devolved Administrations Department
London SW1A 2AL

Telephone: 0171-270-
Facsimile: 0171-270-

12 November 1999

Mr R Gordon
Head of Executive Secretariat
Scottish Executive
Room 051
St Andrew's House
EDINBURGH EH1 3DG

JL cc: OIB

Over does

F

Dear Robert,

DEVOLUTION: UK INTERNATIONAL OBLIGATIONS

I am pleased to enclose a list of the UK's principal multilateral treaty obligations that touch on devolved matters in Scotland. I hope that the list will be of use to the Scottish Executive in fulfilling its obligations in this regard under the Scotland Act 1998.

A great deal of time and effort has gone into the compilation of the list and other UK Government departments have had the opportunity to consider and comment on their entries. However, I would draw your attention to the caveat in paragraph 3 of the Introduction. This type of compilation is a very difficult exercise and we cannot claim that the list is fully comprehensive. I hope that copy recipients will bear the list in mind and do their best to notify us of any omissions which come to light, or any changes. In any event, we intend to initiate an annual updating of the list but departments should not wait for that annual opportunity if there are changes of which we should be aware in the meantime.

I am writing to Jon Shortridge in similar terms and a list for Northern Ireland is under preparation.

I am copying this letter with the enclosure to those on the JMC(O) circulation list.

Yours ever,
June

June E Milligan
Devolved Administrations Department

DEVOLUTION

PRINCIPAL MULTILATERAL TREATY OBLIGATIONS OF THE UK TOUCHING ON DEVOLVED MATTERS: SCOTLAND

INTRODUCTION

1. Under the Scotland Act 1998, Scottish Ministers are responsible for observing and implementing the international obligations of the United Kingdom which relate to their devolved responsibilities.

2. This list is intended as a guide for policy-makers as to what those international obligations are. It sets out the principal multilateral treaty obligations of the UK (other than its EU and ECHR obligations, which are dealt with elsewhere) that touch on 'devolved matters', i.e., those matters not reserved to the UK Government under the Scotland Act 1998.

3. **THE LIST DOES NOT PURPORT TO BE COMPREHENSIVE EITHER IN ITS COVERAGE OF DEVOLVED MATTERS OR IN ITS COVERAGE OF THE UK'S MULTILATERAL TREATY OBLIGATIONS, WHICH ARE EXTENSIVE. NOR DOES IT ATTEMPT TO COVER THE UK'S INTERNATIONAL OBLIGATIONS DERIVING FROM BILATERAL TREATIES OR CUSTOMARY INTERNATIONAL LAW.**

4. The list will need to be reviewed from time to time, to take account of further international obligations arising in the subject areas considered.

5. The devolved administration for Scotland will also need to be aware of international obligations relating to reserved matters that impact upon devolved areas.

CONTENTS

- I. Agriculture
- II. The Arts
- III. Economic development
- IV. Education
- V. Employment
- VI. Environment
- VII. Fisheries
- VIII. Forestry
- IX. Health
- X. Justice and Home Affairs
- XI. Local Government
- XII. Social Services
- XIII. Sport
- XIV. Tourism
- XV. Transport
- XVI. Other Matters (Human rights; Statistics)

I. Agriculture

A. Farming/Animal Health. *Obligations with regard to reporting of disease, protection, slaughter, transport of animals:*

- International Agreement for the Creation of an International Organisation for Epizootics (contagious diseases of animals), 25 January 1924.
- Constitution of the European Commission for the Control of Foot and Mouth Disease, 11 December 1953 (FAO), as amended.
- European Convention for the Protection of Animals during International Transport, 13 December 1968 (CE); and Additional Protocol of 1979.
- European Convention for the Protection of Animals Kept for Farming Purposes, 10 March 1976 (CE).
- European Convention for the Protection of Animals for Slaughter, 10 May 1979 (CE).
- Agreement establishing an International Foot and Mouth Disease Vaccine Bank, 26 June 1985.

B. Plant and seed (*see further under 'Environment: wildlife', Title VI (L) below*)

- OECD schemes for the certification of seed moving in international trade

C. Viticulture

- Arrangement for the establishment of the International Vine and Wine Office, 29 November 1924 (The International Office makes proposals concerning appellations of origin, guarantees of purity and the repression of unfair practices, etc.)

II. The Arts

- Agreement on the Importation of Educational Scientific and Cultural Materials, 22 November 1950 (UNESCO); and Protocol of 26 November 1976.
- European Cultural Convention, 19 December 1954 (CE).
- Statutes of the International Centre for the Study of the Preservation and Restoration of Cultural Property, 5 December 1956 (UNESCO).
- Customs Convention Concerning Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events, 8 June 1961.
- International Covenant on Economic, Social and Cultural Rights, 1966: Article 15.
- European Convention on Cinematographic Co-Production, 2 October 1992 (CE).

III. Economic development (*inward investment, trade*)

- Convention on the Organisation for Economic Co-operation and Development, 14 December 1960 (OECD).
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966.
- Investment protection/settlement of disputes:
 - . Convention establishing the Multilateral Investment Guarantee Agency (MIGA), 11 October 1985.
 - . Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID), 18 March 1965.
- World Trade Organisation Agreement, 1994.

IV. Education (including higher education)

- Agreement on the Importation of Educational Scientific and Cultural Materials, 22 November 1950 (UNESCO); and Protocol of 26 November 1976.
- European Convention on the Equivalence of Diplomas Leading to Admission to Universities, 11 December 1953 (CE); and 1964 Protocol.
- European Convention on the Equivalence of Periods of University Study, 15 December 1956 (CE).
- European Convention on the Academic Recognition of University Qualifications, 14 December 1959 (CE).
- Convention against Discrimination in Education, 14 December 1960, and 1962 Protocol (UNESCO).
- European Social Charter, 18 October 1961 (CE) (selective provisions) (reporting obligations).
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (reporting obligations).
- European Agreement on Continued Payment of Scholarships to Students Studying Abroad, 12 December 1969 (CE).
- Convention on the Elimination of all Forms of Discrimination against Women, 1979 (reporting obligations).
- International Convention on the Rights of the Child, 20 November 1989.

V. Employment

A. Equality of Opportunity in Employment

- Equal Remuneration Convention (ILO 100), 29 June 1951.
- International Convention on the Elimination of all Forms of Racial Discrimination, 7 March 1966 (reporting obligations).
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (reporting obligations).
- Convention on the Elimination of all Forms of Discrimination against Women, 18 December 1979 (reporting obligations).

B. Health and Safety

- ILO Labour Inspection Convention, 11 July 1947 (No 81). (This Convention provides that health and safety inspectors in the work place should be public officials. Local authorities enforce health and safety law in certain workplaces (and will continue to do so after devolution. Since the Scottish Parliament and Welsh Assembly have control over local authorities, this Convention will be the direct responsibility of both Scotland and Wales in so far as it relates to local authorities.)

C. Migrant Workers

- Agreement on the European Economic Area, Oporto, 2 May 1992, as adjusted by Protocol signed at Brussels, 17 March 1993.

D. Training

- European Social Charter, 18 October 1961 (CE) (selective provisions) (reporting obligations).
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (reporting obligations).
- European Agreement on the Instruction and Education of Nurses, 25 October 1967 (CE).
- International Labour Organisation (ILO) Conventions, eg:
 - . Paid Education Leave Convention, 24 June 1974 (ILO 140).
 - . Human Resources Development Convention, 23 June 1975 (ILO 142).

VI. Environment

A. Air quality

- UN Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution, 13 November 1979 (the '1979 Convention').
- Protocol to the 1979 Convention concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes.
- Protocol to the 1979 Convention concerning the Control of Emissions of Volatile Organic Compounds (VOCs) or their Transboundary Fluxes.
- Protocol to the 1979 Convention on Further Reduction of Sulphur Emissions.
- Protocol to the 1979 Convention on Heavy Metals.
- Protocol to the 1979 Convention on Persistent Organic Pollutants.

B. Bio-diversity

- UN Convention on Biological Diversity, 5 June 1992.

C. Built heritage

- European Convention on the Protection of the Archaeological Heritage, London, 6 May 1969 (CE).
- Convention for the Protection of the World Cultural and Natural Heritage, 16 November 1972 (UNESCO).
- UN Convention on the Law of the Sea, 1982 (Article 303: duty of protection of archaeological and historic objects (eg wrecks) found at sea; and jurisdiction over such objects in the contiguous zone).
- European Convention for the Protection of the Architectural Heritage of Europe, 3 October 1985 (CE) (the Granada Convention).
- European Convention on the Protection of the Archaeological Heritage (revised), Valletta, 16 January 1992 (CE) (*signed, but not yet ratified*).

D. Chemicals

- Rotterdam Convention on the Prior Informed Consent procedure for Certain Hazardous Chemicals and Pesticides in International Trade

E. Climate change

- UN Framework Convention on Climate Change, 9 May 1992.
- Kyoto Protocol to the UN Framework Convention on Climate Change, 11 December 1997 (*signed but not yet ratified*).

F. Energy

- Energy Charter Treaty, Lisbon, 17 December 1994.
- Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, 17 December 1994.

G. Flood prevention/coast protection (*see further under 'Marine', below*)

- UN Convention on the Law of the Sea, 1982 (specifies limits of the territorial sea): may be relevant in defining the area of the sea to which the provisions of the Coast Protection Act 1949 apply.

H. Hazardous and radioactive waste

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989 (UNEP), as amended.
- Vienna Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997.

I. Marine

- London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 29 December 1972, as amended; and the 1996 London Protocol.
- International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978, related thereto (MARPOL).
- UN Convention on the Law of the Sea, 10 December 1982, Part XII.

- Bonn Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, 13 September 1983.
- Convention for the Protection of the Marine Environment of the North East Atlantic, 22 September 1992 (OSPAR Convention); and new Annex V, adopted 22 July 1998, and Appendix 3 (*not yet ratified*).
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1991.
- Protocol of 1992 to amend the 1969 Convention on Civil Liability for Oil Pollution Damage.
- Protocol of 1992 to amend the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

J. Ozone

- Vienna Convention for the Protection of the Ozone Layer 22 March 1985.
- Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987.
- London Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- Copenhagen Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer
- Montreal Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (*not yet ratified*).

K. Transboundary watercourses

- Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 17 March 1992 (UNECE) (*signed, but not yet ratified*); and London Protocol on Water and Health, 17 June 1999 (*not yet ratified*).

L. Wildlife

- Convention on the Establishment of the European and Mediterranean Plant Protection Organisation, 18 April 1951, as amended.
- International Convention for the Protection of Plants and Plant Products, 6 December 1951, as amended.

- International Convention for the Protection of New Varieties of Plants, 2 December 1961; as amended by Additional Act of 10 November 1972; as revised at Geneva, 23 October 1978; and amended by Act of 19 March 1991.
- Convention on Wetlands of International Importance especially as Waterfowl Habitat, 2 February 1971; and 1982 Protocol.
- Convention for the Protection of the World Cultural and Natural Heritage, 16 November 1972 (UNESCO).
- Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 10 December 1976.
- Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS), 23 June 1979.
- Berne Convention on the Conservation of European Wildlife and Natural Habitats, 19 September 1979 (CE).
- Agreement on the Conservation of Bats in Europe (EUROBATS), 4 December 1991.
- Agreement for the Conservation of Small Cetaceans in the Baltic and North Sea (ASCOBANS), 17 March 1992.
- Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), 15 August 1996.

M. Others

- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), 25 February 1991.
- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998 (*signed, but not yet ratified*).

VII. Fisheries

- UN Convention on the Law of the Sea 1982 (Part II on the territorial sea and contiguous zone; Part V on the exclusive economic zone).
- UN Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 24 November 1993 (*signed, but not yet ratified*).
- UN Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 August 1995 (*signed, but not yet ratified*).

VIII. Forestry

- The UK has "soft" obligations arising from:
 - a. adoption at the UN Conference on Environment and Development in June 1992 of the *Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests*; and the forestry chapter of Agenda 21;
 - b. adoption at the 1993 Helsinki Conference of European Forestry Ministers of resolutions on *Guidelines for the Sustainable Management of Forests in Europe*; *Guidelines for the Conservation of the Biodiversity of European Forests*; *Forestry Co-operation with Countries in Transition*; and *Strategies for Long Term Adaptation of Forests in Europe to Climate Change*;
 - c. adoption at the 1998 Lisbon Ministerial Conference on the Protection of Forests in Europe of resolutions on *People, Forests and Forestry - Enhancement of the Socio-Economic Aspects of Sustainable Forest Management*; and *Pan-European Criteria, Indicators and Operational Level Guidelines for Sustainable Forest Management*. (The intergovernmental process of the European Forestry Ministers Conference is expected to run for several years.)
 - d. the adoption of the proposals for action of the Intergovernmental Panel on Forests (IPF), submitted to the Commission on Sustainable Development in April 1997 and to the UN General Assembly Special Session in June 1997;

IX. Health

A. Global

- Constitution of the World Health Organisation (WHO), 22 July 1946, as amended.
- International Covenant on Economic, Social and Cultural Rights, 1966 (reporting obligations).
- WHO Nomenclature Regulations, 22 May 1967 (require the parties to compile mortality and morbidity statistics in the manner specified).
- International Health Regulations, 25 July 1969; as amended by 1973 and 1981 Amendments (WHO) (authorise and regulate health or sanitary controls on entry and exit to/from a State's territory).
- Other WHO Regulations, adopted under Article 21 of the WHO Constitution. (These come into force for all WHO members (including the UK) after due notice has been given of their adoption by the WHO Assembly, except for such members as may notify the Director-General of their rejection or of reservations within the period stated in the notice.)
- Convention for the Mutual Recognition of Inspections in respect of the Manufacture of Pharmaceutical Products, 8 October 1970.
- International Labour Organisation (ILO) Conventions and Recommendations on, eg, Occupational Safety and Health.

B. European

- European Convention on Social and Medical Assistance and Protocol, 11 December 1953 (CE), as amended.
- Agreement on the Temporary Importation, Free of Duty, of Medical, Surgical and Laboratory Equipment for Use on Free Loan in Hospitals and Other Medical Institutions for Purposes of Diagnosis or Treatment, 28 April 1960 (CE); and Additional Protocol of 29 September 1982.
- European Agreement on Mutual Assistance in the Matter of Special Medical Treatments and Climatic Facilities, 14 May 1962 (CE).
- European Agreement on the Exchanges of Blood-Grouping Reagents, 14 May 1962 (CE); and Additional Protocol of 29 September 1982.
- European Convention on the Elaboration of a European Pharmacopoeia, 22 July 1964 (CE); and Protocol of 16

November 1989.

- European Agreement on the Exchange of Tissue-Typing Reagents, 17 September 1974 (CE); and 1976 Additional Protocol and 1977 Amendments to Protocol.

X. Justice and Home Affairs

A. Civil Law and Procedure (except in relation to reserved matters)

1. Adoption

- Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions, 15 November 1965 (Hague XIII).
- European Convention on the Adoption of Children, 24 April 1967 (CE).

2. Child custody/abduction

- Convention on the Civil Aspects of International Child Abduction, 25 October 1980 (Hague XXVIII).
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, 20 May 1980 (CE).

3. Execution of foreign arbitral awards

- Protocol on Arbitration Clauses, 24 September 1923.
- Convention on the Execution of Foreign Arbitral Awards, 26 September 1927.
- Convention on the Recognition and Execution of Foreign Arbitral Awards 10 June 1958.

4. Reciprocal enforcement of maintenance orders

- New York Convention on the Recovery Abroad of Maintenance, 20 June 1956.
- Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, 2 October 1973.

5. Other matters (evidence, immunity, jurisdiction, recognition and enforcement of judgments)

- Vienna Convention on Diplomatic Relations, 18 April 1961.
- Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions, 5 October 1961 (Hague XI).

- Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 5 October 1961 (Hague XII).
- Vienna Convention on Consular Relations, 24 April 1963.
- Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions, 15 November 1965 (Hague XIII).
- Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, 15 November 1965 (Hague XIV).
- Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 18 March 1970 (Hague XX).
- Convention on the Recognition of Divorces and Legal Separations, 1 June 1970 (Hague XVIII).
- European Convention on State Immunity, 16 May 1972 (CE).
- European Convention on the Legal Status of Children born out of Wedlock, 15 October 1975 (CE).
- Convention on the Law Applicable to Trusts and on their Recognition, 1 July 1985.
- Lugano Convention on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters, 16 September 1988.
- International Convention on the Rights of the Child, 20 November 1989.

B. Criminal Law and Procedure (except for extradition and offences relating to reserved matters, including drugs, money laundering)

- Several treaties impose obligations to create criminal offences; and some, to prosecute or extradite offenders: eg,
 - . Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
 - . International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, 12 September 1923; and 1947 Protocol.
 - . The 1949 Geneva Conventions relating to the protection of victims of international armed conflict; and Additional Protocol I of 1977: grave

breaches.

- . Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963 (Tokyo Convention).
- . Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970 (Hague Convention).
- . Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971 (Montreal Convention).
- . Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973.
- . International Convention against the Taking of Hostages, 17 December 1979.
- . Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984.
- . European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular Football Matches, 19 August 1985 (EC).
- . Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 24 February 1988.
- . Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March 1988; and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 10 March 1988.
- . Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1 March 1991 (ICAO).
- . Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction, 13 January 1993.
- . Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997.
- European Convention on Mutual Assistance in Criminal Matters, 20 April 1959 (CE); and Additional Protocol of 1978.
- European Convention on the Transfer of Sentenced Persons, 21 March 1983 (CE).

- European Convention on the Compensation of Victims of Violent Crimes, 24 November 1983 (CE).
- Agreement with the Netherlands concerning a Scottish Trial in the Netherlands, September 1998 (Lockerbie).

C. Prisons (including treatment of offenders)

- International Covenant on Civil and Political Rights, 16 December 1966 (reporting obligations).
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (reporting obligations).
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26 November 1987 (CE): requirement to allow and facilitate visits to prison and other forms of custody in the State's jurisdiction by the Committee for the Prevention of Torture.

XI. Local Government

- European Charter of Local Self-Government, 15 October 1985 (CE).

XII. Social Services

- A. Children (*abduction/adoption/recognition and enforcement of child custody decisions/general*)
- Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions, 15 November 1965 (Hague XIII).
 - European Convention on the Adoption of Children, 24 April 1967 (CE).
 - Convention on the Civil Aspects of International Child Abduction, 25 October 1980 (Hague XXVIII).
 - European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, 20 May 1980 (CE).
 - European Convention on the Legal Status of Children born out of Wedlock, 15 October 1975 (CE).
 - International Convention on the Rights of the Child, 20 November 1989.
- B. Maintenance
- New York Convention on the Recovery Abroad of Maintenance, 20 June 1956.
 - Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, 2 October 1973.

XIII. Sport

- European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular Football Matches, 19 August 1985 (CE).
- European Anti-Doping Convention, 16 November 1989 (CE).

XIV. Tourism

- Convention on the Liability of Hotel-Keepers concerning the Property of their Guests, 17 December 1962 (CE).

XV. Transport

A. Airports/Aviation

- Convention on International Civil Aviation, 7 December 1944 (the 'Chicago Convention'). Since civil aviation is a reserved matter, the great majority of obligations in the Convention will continue to be the responsibility of the UK Government. However, certain of the obligations are relevant to the development of airports, and will need to be taken into account by planning authorities and by the devolved administrations exercising or amending planning powers.

B. Ports/Harbours

- UN Convention and Statute on the International Regime of Maritime Ports, 9 December 1923.

C. Rail

- Berne Convention concerning International Carriage by Rail, 9 May 1980.

XVI. Other Matters

- A. Human rights. A number of multilateral conventions impose obligations across a range of devolved fields, eg:
- International Covenant on Civil and Political Rights, 1966.
 - International Covenant on Economic, Social and Cultural Rights, 1966.
 - International Convention on the Elimination of all Forms of Racial Discrimination, 1966.
 - Convention on the Elimination of all Forms of Discrimination against Women, 1979.
 - European Charter for Regional or Minority Languages, 1992 (CE) (*not yet signed or ratified*).
 - European Framework Convention for the Protection of National Minorities, 1995 (CE).

The UK Government has reporting obligations (ie to submit periodic reports) under some UN and Council of Europe agreements. The Home Office will continue to co-ordinate reports on the Conventions on which it leads.

- B. Statistics. The UK has reporting obligations arising from membership of various international organisations, eg IMF and OECD; and ratification of various conventions (eg Convention concerning Labour Statistics, 25 June 1985 (ILO)). There are also informal reporting arrangements with many of the UN bodies.

Foreign and Commonwealth Office
October 1999

Top-OB
cc Doo
PJ



Ministry of Agriculture, Fisheries and Food,
Nobel House, 17 Smith Square, London SW1P 3JR

From the Minister

The Rt Hon Margaret Beckett MP
Privy Council Office
2 Carlton Gardens
London SW1Y 5AA

31 October 1999

Dear Margaret,

GOVERNMENT RESPONSE TO THE PROCEDURE COMMITTEE'S REPORT ON DEVOLUTION

Thank you for the copy of your letter of 5 October to Derry Irvine seeking collective agreement to the draft response to the Fourth Report from the Procedure Committee 1998-99 on the Procedural Consequences of Devolution (HC 185).

I confirm that I am content with the draft response, including your proposal to accept the recommendation that the House be asked to agree a resolution restricting the matters on which questions may be asked on devolved matters. I agree that the motion should be put to the House at the same time as the report is debated.

I am sending copies of this letter to the Prime Minister and DP Colleagues, and to Sir Richard Wilson.

*Yours sincerely
Nick*

NICK BROWN





PRIVY COUNCIL OFFICE
2 CARLTON GARDENS LONDON SW1Y 5AA

Tel 020 7210 1040

Fax 020 7210 1072

E-mail agalloway@cabinet-office.x.gsi.gov.uk

28 October 1999

From the Clerk of the Council

Jonathan Margetts Esq
Northern Ireland Office
Millbank
London
SW1P 4PN

Dear Jonathan,

NORTHERN IRELAND DEVOLUTION: APPOINTED DAY ORDER

We spoke, and I have since seen a copy of your letter of 27 October to Murdo Maclean.

I am grateful for your having directly alerted us by telephone to the possibility of an emergency Privy Council meeting following the laying of the Order before Parliament. For the benefit of copies it would be very helpful if all communications on this topic could be copied directly to me (fax number above) as well as to the President's Office, to minimise the delay in firming up details of the meeting if it turns out to be needed. I have given you over the telephone an indication of Her Majesty's availability over the first half of next week, and I believe our general office have flagged up our expectation that Northern Ireland Office Ministers would attend the meeting, given the difficulty of securing other Privy Counsellors at short notice (the quorum is three, but we could manage with two through the expedient of asking The Queen's Private Secretary - who is a Privy Counsellor - to act as the third). It may be necessary to ask Mr Mandelson to act as President if Mrs Beckett is unable to attend.

I am copying this letter to John Sawers, Murdo Maclean, Jonathan Capstick and Simon Burton.

yours sincerely,

Alex Galloway

ALEX GALLOWAY

File 2

*Top: FA/PS
COS
FA/PS (PB)
FA/PS (MT)
AC/Press
FA/PS
QS*

SKP 28/10/99



The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
2 CARLTON GARDENS LONDON SW1Y 5AA

21/10/99

Dear Alistair,

**GOVERNMENT RESPONSE TO THE PROCEDURE COMMITTEE'S REPORT ON
DEVOLUTION**

Thank you for your letter of 20 October about the debate today on the procedural consequences of devolution. I absolutely share your concerns about reciprocity with the devolved legislatures and value your advice based on the ability to see things from both sides of the border.

The main reason I have been reluctant to rush into procedural change at Westminster has been uncertainty about how the Scottish Parliament and the National Assembly for Wales will handle these issues. In my speech I plan to endorse the Procedure Committee's expressed willingness to keep these matters under review. I will also say that we expect further adjustment to procedure to be necessary in the light of experience.

I will shortly be holding meetings with Tom McCabe from the Scottish Executive and Andrew Davies from the National Assembly to discuss business management and the legislative programme. I will certainly take the opportunity to put the point about reciprocity and the need for a stable relationship. In the meantime I think we have to accept that the devolved legislatures are still settling in and we will have to become accustomed to devolution ourselves. As the longer-established body, it may have to be Westminster which is slow to chide and swift to bless.

The combination of the new resolution on questions to ministers and the devolution guidance notes on ministerial correspondence and on the devolution boundary should help MPs and MSPs, if not the public, to begin to appreciate where the line of ministerial responsibility now lies. Both your ministerial brief and your constituency location put you in a good position to let me know how things work out in practice and I hope you will do so.

I am sending a copy of this to the Prime Minister, Derry Irvine and DP colleagues and to Sir Richard Wilson.

Regards
Margaret

MARGARET BECKETT

The Right Hon Alistair Darling MP
Secretary of State for Social Security

Top: APS
NO. 10
-PL DN

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800



From the Secretary of State for Social Security

RESTRICTED - POLICY

(f)

The Rt Hon Margaret Beckett MP
President of the Council
Privy Council Office
2 Carlton Gardens
LONDON SW1Y 5AA

20 October 1999

Dear President of the Council

**GOVERNMENT RESPONSE TO THE PROCEDURE COMMITTEE'S
REPORT ON DEVOLUTION**

Thank you for copying to me your letter of 5 October to Derry Irvine, seeking collective agreement to your draft response to the Fourth Report of the Procedure Committee.

I can accept the proposed reply, though I have reservations about the detail of the draft Procedure Committee resolution which you plan to put to the House on 21 October. As you recognise, there is a risk that the resolution is too widely drawn, both in relation to the reference to concordats and to matters in which UK Ministers have taken an "official interest". You may therefore want to indicate to the House that changes will be proposed if the motion does not prove an effective framework.

If the House agrees to reformulate its rules along these lines, there are bound to be questions about whether the Scottish Parliament and the National Assembly will do the same. I believe it would be helpful to be prepared to say during the debate what steps can be taken both to secure a corresponding



Recycled Paper

SKP 20/10/99

20/10/1999

12:51

SOS DSS -> NO 10 DUTY CLER

NO. 189

E.R.

RESTRICTED - POLICY

resolution and ensure that it is implemented along comparable lines. The Speaker said that she would send a copy of her ruling of 12 July to Holyrood, but from the experience of my Department, the Scottish Chamber Office is nevertheless admitting questions which do not appear to accord with the devolution settlement - and Scottish Ministers are replying in some detail. There are bound to be some initial problems, but it will not be possible to achieve a stable relationship unless all parties exercise a similar degree of restraint. We can't have a situation in which the settlement is one-sided.

A corresponding resolution in Scotland and Wales would not in my view simply be the mirror image of the Procedure Committee's draft, but should be more tightly linked to matters for which the devolved legislatures are responsible. The public will not always distinguish which body is responsible for every policy. We must be careful, therefore, that the Parliament and the Assembly don't raise expectations or make statements for which they have no responsibility.

I am copying this to the Prime Minister, to Derry Irvine and DP colleagues and to Sir Richard Wilson.

Yours sincerely

Alastair Darling
ALISTAIR DARLING

*Approved by the Secretary of State and
signed in his absence*

