

MEMORANDUM OF UNDERSTANDING BETWEEN THE UK GOVERNMENT AND THE DEVOLVED ADMINISTRATIONS

This short briefing on the *Memorandum of Understanding between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee* (the MoU) was produced at the request of the Devolution (Further Powers) Committee. The briefing describes the origin and purposes of the MoU and discusses reaction to the MoU by the UK and devolved governments. It also considers the recommendation in the Smith Commission report for a revised MoU.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UK AND DEVOLVED GOVERNMENTS

Since 1999, at least seven versions of the *Memorandum of Understanding between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee* have been produced (see Annex 1).

The MoU, together with bilateral concordats, set out the principles underlying relations between the UK and the devolved administrations. They are not legal documents. Rather, they describe the need for, and practical benefits of, the four administrations working together bilaterally and multi-laterally. They are to be regarded as working tools to guide the administrations of the four governments.

The various versions of the MoU reflect the changes in devolution which have occurred over the past 16 years.

Scottish Government and the MoUs

Written [evidence](#) (See extract below), submitted by the then Scottish Executive, to the 2002 inquiry by the House of Lords Select Committee on the Constitution into [Devolution: inter-institutional relations in the United Kingdom](#), provides a useful interpretation of the purpose and status of the MoU and related documents:

“The Scottish Executive and the Scottish Parliament are of course statutory bodies, and their legal powers and competence are those conferred upon them by the Scotland Act 1998 and the Orders made under that Act. However, it was accepted on all sides at the time of devolution that the legal framework set out in the Scotland Act would be likely to work more effectively, and more smoothly, if it was underpinned by a clear and public understanding as between the devolved administrations and the UK Government about how they envisaged the relationship would work in practice. That understanding is reflected in a series of published documents, the most important of which are:

- the Memorandum of Understanding and Supplementary Agreements between the UK Government and the Devolved Administrations (Cm 5240);
- the bilateral concordats between Scottish Executive Departments and their Whitehall counterparts;
- the Devolution Guidance Notes (DGNs) issued by the Cabinet Office after consultation with the devolved administrations; and
- the Statement and guidance on Devolution in Practice which was issued by the Prime Minister and the Leaders of the devolved administrations in 2001.

None of these documents has the force of law, and nothing in them can add to or detract from the formal legal position as set out in the Scotland Act. Nevertheless, they play a crucial part in "oiling the wheels" of the devolution settlement, because they represent a clear, agreed and public basis for relations between the devolved administrations and the UK Government. The principles of consultation, communication and confidentiality which are reflected in all of these documents are central to the good working relationships which have been established and maintained between all four administrations."

The MoUs and the Scottish Parliament

On [7 October 1999](#), the Scottish Parliament was asked to endorse the first Memorandum of Understanding, which the Scottish Executive had laid before the Parliament. The First Minister indicated that this endorsement was a courtesy and not a requirement for the use of the MoU:

"... we are asking for the Parliament's endorsement of the document. However, I stress again that the document should be seen as a set of administrative ground rules.

The concordats are essentially working documents, which will contribute to the smooth running of relationships under devolution. Some unkind souls have called them road maps for bureaucrats. Perhaps that is unkind, but it is not wholly unfair as it is important for bureaucrats to have road maps to know how the system works."

When questioned about scrutinising the working of the MoU and concordats by the Scottish Parliament, the First Minister, Donald Dewar, said:

"One of the features of this Parliament is a range of committees that are probably more powerful than any parliamentary committees that I have seen. They have a life and responsibilities of their own. It would not be beyond the wit and wisdom of the European Committee, for example, under the convenership of my colleague Hugh Henry, if he suspects that things are going wrong, to call witnesses, to scrutinise and inquire into the record and to call ministers. If there was discontent about the outcome of that, it could come back to the floor of this chamber, which, ultimately, is the place where final decisions have to be taken.

The concordats are working documents, and my contention to this Parliament is that it is very important that they are in place. In the course of time, whatever the good intentions in the opening period, one may find that the proper procedures slip; people may start to omit and to forget. It is extremely useful for ourselves and for

our colleagues in Wales and, potentially, in Northern Ireland, to have such a working document. In the Westminster setting, it is a familiar piece of machinery. I think that it is right for it to be extended, in the interests of good order, to our relations with the rest of the Government machinery within the United Kingdom.”

Since 1999, there have been no further debates on these MoUs and the Scottish Government has used various ways of alerting the Scottish Parliament about the issuing of revised or updated MoUs.

For example, in [2010](#), following the first updating of the MoU since 2001, and again in [2011](#), the Scottish Government used responses to parliamentary questions to inform the Parliament of changes to the Memorandum of Understanding.

However, the revised version in [2012](#) was only mentioned in passing in the response to a parliamentary question, and the Scottish Parliament does not appear to have been alerted to the issue of the most recent [MoU](#) in October 2013.

MOUS AND OTHER UK LEGISLATURES

House of Commons

The House of Commons has never held a debate on any of the MoUs.

In February 2011, Nick Clegg, the Deputy Prime Minister, in an [answer](#) to a written question, noted that the Memorandum of Understanding was last updated in March 2010 and was kept under annual review by the Government and the devolved Administrations through the Joint Ministerial Committee on Devolution.

Thereafter, a [written statement](#) was issued in June 2011 to mark the depositing of a copy, of what was then the latest version, in the House of Commons Library.

Since then, the only mention of later revised versions has been in answers to parliamentary questions, with UK government departments referring to “The Memorandum of Understanding and Supplementary Agreements, agreed in September 2012”, which superseded the paper deposited in June 2011.

This 2012 version appears to have been superseded again, and a [version](#) dated October 2013 is available on the UK Government’s website. However, the website still [states](#) that “The memorandum of understanding between the UK government and the devolved administrations was agreed in September 2012”.

National Assembly for Wales (NAW)

The 1999 MoU was the subject of a Welsh Government debate, on [7 October 1999](#), in the NAW on the motion that the “Assembly take note of the Memorandum”. This motion was subject to an amendment from the Liberal Democrats, expressing concern that:

“...the channels of communication are only being established with the Assembly Executive. The Assembly further proposes to establish protocols for communication between the Assembly as a whole with the UK Government and the other devolved administrations.”

Moving the Liberal Democrat amendment, the party's leader in the Assembly, Mike German, said the government was not taking account of the fact that it was operating within a body corporate in which it did not have an overall majority:

"Can the Executive be relied upon to represent the views of the Assembly as a whole? I ask that question not of the Executive but of the rest of the Assembly. It is a rhetorical question and one only you can answer..."

"...The Assembly is a different institution and works in a different way from Westminster. We deliberately set about working in a different way. The role of our Committees is crucial in that respect. They have a policy formation role, whereas committees in Parliament have a scrutiny role only. That means that our Committees have a powerful role to play, one which is not replicated at Westminster. We need to find a way to acknowledge that."

Responding to the Liberal Democrat amendment the First Secretary, Alun Michael, said:

"Concordat as defined in devolution theology deals with executive functions and sound administration. It is therefore correct that there is agreement between the Cabinet here, in London and in Edinburgh."

In the recorded vote the combined Liberal Democrat and Conservative vote for the amendment was 9, with 24 Labour votes against, and 16 Plaid Cymru abstentions.

Since 1999, the First Minister has only issued written statements when laying the revised versions before the Assembly in [2012](#) and [2013](#), and there have been no further plenary debates.

Northern Ireland Assembly

In 1999, the first MoU was tabled by the First and deputy First Ministers and was subject to a [debate](#) on a motion to take note of the Memorandum. The motion was subject to an amendment lodged by Ian Paisley, leader of the Democratic Unionist Party, asking that the Assembly:

"...will not take note of the Memorandum of Understanding and Supplementary Agreements between Her Majesty's Government and the Northern Ireland Executive Committee until the political parties have been consulted thereon."

There were divisions and the original, unamended, motion was agreed to.

In April 2010, the revised MoU was the subject of a [Ministerial Statement](#) from the First and deputy First Ministers.

There has been no further mention of the MoU in the Northern Ireland Assembly.

MOUS AND FURTHER DEVOLUTION IN SCOTLAND

Smith Commission

The [Smith Commission Report](#) (Paragraph 30) called for reformed inter-governmental arrangements.

This included a call for the current inter-governmental machinery between the Scottish and UK Governments, including the Joint Ministerial Committee structures, to be reformed as a matter of urgency, taking into account the views of the other devolved administrations.

The Commission specifically asked for:

- the development of a new and overarching MoU between the UK Government and devolved administrations.
- the revised MoU would:
 - lay out details of the new bilateral governance arrangements which will be required to oversee the implementation and operation of the tax and welfare powers to be devolved by way of this agreement.
 - provide for additional sub-committees within the strengthened JMC structure beyond the current sub-committees. New sub-committees could include, but need not be limited to, policy areas such as home affairs; rural policy, agriculture & fisheries; or social security/welfare.
- the revised MoU would be underpinned by much stronger and more transparent parliamentary scrutiny, including:
 - laying of reports before respective Parliaments on the implementation and effective operation of the revised MoU
 - pro-active reporting to respective Parliaments of, for example, the conclusions of Joint Ministerial Committee, Joint Exchequer Committee and other inter-administration bilateral meetings established under the terms of this agreement.

Scotland in the United Kingdom: an enduring settlement

The Command Paper produced by the UK Government in response to the Smith Commission report, [Scotland in the United Kingdom: an enduring settlement](#), includes commitments to create memorandums of understanding in several policy areas, including an MoU relating to the relationship between the BBC and the Scottish Government and Scottish Parliament (Paragraph 5.2). The inclusion of Parliament as a party to the proposed MoU appears to be a first and may require the development of parliamentary procedures.

As noted above, the Smith Commission called for a revision of the current overarching memorandum of understanding, seen as necessary in light of the increasingly complex and divergent constitutional arrangements within the UK brought about by further devolution to all three devolved countries.

The Command Paper (Paragraph 9.2.2) describes actions already underway to translate the recommendation in Smith into reality:

“It is in the best interests not only of the people of Scotland but of people across the UK, that the Devolved Administrations and UK Government work well together for the benefit of the whole of the UK. Therefore, and as recognised in the Smith Agreement, changes to inter-governmental working will be developed collaboratively

by the UK Government and the three Devolved Administrations. This work has already begun. The Joint Ministerial Committee met on 15 December 2014 and the Prime Minister, the First Ministers of Scotland and of Wales and the First Minister and the deputy First Minister of Northern Ireland [agreed](#) to commission work on a revised Memorandum of Understanding. Officials have set up an initial meeting in early February, which will form the first step in this process”.

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ANNEX 1: MEMORANDUMS OF UNDERSTANDING BETWEEN THE UNITED KINGDOM GOVERNMENT AND THE DEVOLVED GOVERNMENTS

The following is a list of the MoUs. The Scottish Parliament Information Centre (SPICe) also holds copies of the four Command Papers (Cm) and the version from September 2012.

Memorandum of understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers and the Cabinet of the National Assembly for Wales, (Withdrawn 19 July 2000). Cm 4444, 1 October 1999

Memorandum of understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee, Cm 4806 26 July 2000

Memorandum of understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee, Cm 5240 18 December 2001

[Devolution: memorandum of understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee](#), Cm 7864, 29 March 2010

[Memorandum of Understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), 30 June 2011

[Memorandum of understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#). September 2012

[Memorandum of Understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013

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