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Don Stephen

During my evidence session with the Devolution (Further Powers) Committee on 19 March, I promised to provide a short note on the evolution of the Memorandum of Understanding (between the UK Government, Scottish Ministers, Welsh Ministers and the Northern Ireland Executive since 1999). My apologies for the delay in providing this information.

I have attached a note outlining the history of the MoU. Copies of all previous versions should be available in the Scottish Parliament Information Centre. I also attach a flowchart showing the current dispute resolution process. It is of course important to bear in mind that the MoU and the Dispute Process are quadrilateral rather than bilateral in nature and therefore no changes can be made without the express agreement of the Welsh Government and the Northern Ireland Executive in addition to the UK Government and the Scottish Government.

As I said in my evidence, while there are many possible models for further development of the dispute avoidance and resolution process, I am not aware of any consensus yet on which should be incorporated into the process.

K A L THOMSON

**The Memorandum of Understanding and Supplementary Agreements
between
United Kingdom Government, Scottish Ministers, Welsh Ministers and the
Northern Ireland Executive Committee
A History.**

The Pre-Devolution Period:

The original Memorandum of Understanding and Supplementary Agreements (MoU), having been drafted in 1999 in preparation for the establishment of the Devolved Executives, predates devolution as we now understand it. At the time of the 1999 draft, the arrangements to establish the Northern Ireland Executive had not been fully realised and so the Northern Ireland Executive was absent from the first version.

The original MoU, as with all successive iterations, was extra-legal in nature, making non-binding provision for good communication, consultation and cooperation between the UK Government and the Devolved Administrations, through the adoption of agreed principles of engagement and the establishment of a new, non-executive, intergovernmental forum, the Joint Ministerial Committee (JMC). The JMC would be able to convene in Plenary and functional (subject-specific) formats.

The Supplementary Agreements, incorporated into the high-level MoU, due to the primary importance of their subject matter at that time, were:

- Agreement on the Joint Ministerial Committee
- Concordat on Coordination of European Union Policy Issues
- Concordat on Financial Assistance to Industry
- Concordat on International Relations
- Concordat on Statistics

A number of bilateral and multilateral Departmental and subject specific Concordats and Service Level-Agreements were also drawn up to supplement the MoU in specific policy areas although revision of these has varied from department to department.

Since then the MoU has transitioned through a further 5 redrafts.

The 1st Redraft – July 2000:

In July 2000 the Lord Chancellor presented a new MoU to the UK Parliament. This new version incorporated references to the Northern Ireland Executive, following the Executive Committee's agreement to adopt the principles of the MoU and their agreement to participate in future meetings of the JMC.

The 2nd Redraft – December 2001:

The MoU contained a commitment to review its provisions on an annual basis. There is no record of significant changes having been made in the 2001 review.

The Suspension of the Northern Ireland Assembly October 2002 – May 2007:

The suspension of the Northern Ireland Assembly from 2002 to 2007 precluded amendments to the MoU during that period, since quadrilateral agreement between Administrations on amended provisions was not possible.

During that time, all meetings of the JMC fell into an abeyance, except those dedicated to European Union Policy. These JMC(Europe) meetings continued, with the Secretary of State for Northern Ireland representing the interests of Northern Ireland.

The 3rd Redraft – March 2010:

Following quadrilateral agreement at the reconvened Plenary Session of the JMC in June 2008, work commenced on reviewing the MoU. The review was substantial and involved prolonged negotiations between administrations.

The role and remit of the JMC Joint Secretariat was set down as an addition to the Supplementary Agreement on the JMC. Similarly a robust set of principles and procedures for inter-Administration dispute resolution was also included in that Agreement.

Both the Concordats on Coordination of European Union Policy and Financial Assistance to Industry were reviewed and brought up to date. The Concordat on Statistics was removed and would continue as a stand-alone agreement between those statistics agencies operating in the four Administrations.

The 4th Redraft – September 2012

Following agreements at both the Domestic and European Sessions of the JMC in 2012, the MoU was again updated and the changes were endorsed by Ministers at the Plenary Session in September that year.

The amendments included revisions of the clauses relating to Confidentiality as well as further revisions to the dispute process, to include an element of independent analysis, and to both the Concordats on Coordination of European Union Policy and Financial Assistance to Industry.

The 5th Redraft – October 2013

The 5th and most recent revision of the MoU focused primarily on updating clauses in the Concordat on Coordination of European Union Policy, primarily with regard to Attendance and representation at Council of Ministers and related meetings.

Seek Resolution at lowest level - move back along the process if possible - escalation a last resort

