

# **TREATIES AND MEMORANDA OF UNDERSTANDING (MOUs)**

**GUIDANCE ON PRACTICE AND PROCEDURES**

**TREATY SECTION  
LEGAL DIRECTORATE  
FOREIGN, COMMONWEALTH AND DEVELOPMENT OFFICE**

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## **(i) TREATIES AND MOUs**

### **RESPONSIBILITY FOR CONCLUDING TREATIES**

1. The responsibility for concluding treaties involving the UK lies with the Secretary of State for Foreign, Commonwealth and Development Affairs. The Foreign, Commonwealth and Development Office (FCDO) is responsible for Foreign, Commonwealth and Development policy aspects of all treaties, as well as for dealing with questions of form and procedure. It also considers points of international law.
2. This remains the case even when the negotiation of the treaty is led by other government departments i.e. the department which will carry out the treaty's provisions. FCDO Legal Advisers and FCDO Treaty Section must be given the opportunity to comment on the drafts of all treaties under negotiation to ensure that they are drafted in accordance with correct international practice.

### **WHAT IS A TREATY?**

3. The term treaty describes an international agreement concluded in writing between States which creates rights and obligations in international law. Treaties are known by a variety of names, for example agreement, convention, protocol, treaty etc. They may be in the form of a single instrument with numbered articles or in the form of an exchange of notes. There can also be treaties between states and international organisations.

### **WHAT IS AN MoU?**

4. A Memorandum of Understanding (MoU) records international commitments, but in a form and with wording which expresses an intention that it is not to be binding as a matter of international law. An MoU is used where it is considered preferable to avoid the formalities of a treaty - for example, where there are detailed provisions which change frequently or the matters dealt with are essentially of a technical or administrative character; in matters of defence or technology where there is a need for such documents to be classified; or where a treaty requires subsidiary documents to fill out the details. Like a treaty, an MoU can have a variety of names (e.g. arrangement) and can also be either in the form of an exchange of notes or a single document. However, the formalities which surround treaty-making do not apply to it and it is not usually published. Confusingly, treaties are occasionally called memoranda of understanding.

### **HOW DO YOU DISTINGUISH AN MOU FROM A TREATY?**

5. Our usual method of distinguishing an MoU from a treaty is by the terms in which they are written. The key difference between MoUs and treaties is whether or not there is an intention to create legally binding obligations. It is UK practice to show clearly by the form of the document and its terminology the intention either to create legally binding obligations, or not, i.e. either a treaty or an MoU. There is no hybrid. Thus, in order to ensure that MoUs are not worded in such a way as to amount to

treaties care should be taken to avoid the use of "treaty language". Guidance on the terminology to be used (and to be avoided) as well as on the form is given in section (iv).

6. Although an MoU is not legally binding it should be no less carefully drafted than if it were a treaty, given that it is always the government's intention to perform all commitments, whether legally binding or not. As with treaties, **all** draft MoUs should be sent to the relevant FCDO thematic or geographic department for clearance. Lead departments should check foreign language versions. Moreover, there should be the same level of inter-departmental consultation as for treaties (see section (ii)).

## **DOCUMENTS REQUIRED BY FCDO TREATY SECTION**

7. The originals of treaty documents should always be sent to Treaty Section, which arranges for their publication as command papers and laying before Parliament. It also arranges for their transfer to the National Archives for permanent preservation upon entry into force for the UK and for their registration with the United Nations in accordance with Article 102 of the Charter of the United Nations.
8. In addition, all notifications about treaties (i.e. notifications about the signature or ratification of treaties by the UK and by other States, about declarations, reservations and objections made by other States, and about the entry into force of treaties), which are received by other government departments directly from a depositary should be forwarded to Treaty Section. States may act as the depositary for multilateral treaties and are responsible for ensuring the proper execution of all treaty actions relating to that treaty. The depositary's duties are internationally uniform in character, and the depositary is under an obligation to act impartially in the performance of those duties.
9. Treaty Section does not hold a central record of MoUs. Lead departments are responsible for maintaining up to date records and original documents.

## (ii) TREATY PROCEDURES

### TREATY NEGOTIATION AND DRAFTING

1. The FCDO can advise on the text and format of treaty drafts, and negotiators should alert FCDO geographic or thematic leads and Treaty Section to new treaties at the earliest possible opportunity. Points to note are:
  - a. It is for the government department responsible for the subject-matter of the treaty (“the lead department”) to prepare the initial draft and to maintain an up to date version as amendments are made during negotiations. All drafts and subsequent amended versions should be dated. Drafts which undergo significant amendment should be cleared again as necessary with FCDO. It is helpful to have amendments highlighted in some way.
  - b. Consistent wording and layout should be used, especially when making amendments and additions. Cross-references should always be checked.
  - c. Any foreign language version must be submitted at the earliest opportunity to FCDO Services Translation Requests ([TranslationRequests@fcdo.gov.uk](mailto:TranslationRequests@fcdo.gov.uk)), by the lead department for the treaty, for comparison and verification against the English text. The lead department needs to agree a timeframe for translation in advance with FCDO Services Translation Requests (a linguistic check is also necessary for an MoU.)
  - d. At all stages of preparation of a treaty, time should be allowed for indispensable standard checks, e.g. legal, linguistic etc.
  - e. A **minimum** of three weeks is usually required by Treaty Section for preparing signature copies of a treaty. Clean versions of the final agreed draft, in English, and foreign languages as appropriate, should be produced in good time by the lead department.
  - f. It is essential that the Devolved Administrations are consulted about negotiations that touch on devolved areas (see section (v) on Devolved Administrations).
  - g. The Crown Dependencies and the British Overseas Territories should be consulted at the earliest possible time when a treaty is being negotiated, or consideration is being given to the signature of a treaty already adopted, which could apply to them (see section (vi) on Application of Treaties to the Crown Dependencies and Overseas Territories).

**The lead department should never make any commitments to the other party or parties about the preparation of documents or about dates for signature without first consulting all relevant FCDO departments, and in particular Treaty Section.**

## **SIGNATURE OF TREATIES**

2. Unless the treaty enters into force on signature, by signing a treaty a State shows that it is in agreement with the text, but it is not bound by it until it expresses its consents to be bound (e.g. by ratification) and the treaty enters into force. The state is not obliged to become bound by (e.g. ratify) a treaty. However, the UK, in general, does not sign a treaty unless it has a reasonably firm intention of becoming bound (e.g. ratifying).
3. In international law a head of state, head of government or foreign minister may sign a treaty in their own right. In UK practice, the Monarch does not sign treaties, but the Prime Minister sometimes does. Anyone else needs to produce Full Powers from one of those three. Full Powers is the document produced as evidence that the person named in it is authorised to represent the state in performing certain actions in relation to the conclusion of a treaty, in particular signature. Full Powers are normally signed by the Foreign, Commonwealth and Development Secretary. However, it is established practice for FCDO ministers and certain UK Representatives to hold General Full Powers signed by the Monarch (usually known as “general full powers”) giving them authority to sign any treaty (in practice subject to being instructed by the FCDO in each case). Anyone else signing a treaty on behalf of the UK requires Specific Full Powers enabling them to sign a specified treaty.
4. The preparation of Full Powers is done by Treaty Section and (unless it is General Full Powers subject to approval of the Monarch in each case) submitted to the Secretary of State for Foreign, Commonwealth and Development Affairs for signature. The lead department should approach the appropriate FCDO department in the first instance at Deputy Director level requesting Full Powers. The request should include the following information: the full title of the treaty, the name, title, position and any decorations of the person(s) to be named in the Full Powers instrument to a maximum of three and attach a copy of the text of the treaty. The requirement for Full Powers is an integral part of the treaty negotiation process and Treaty Section should be given sufficient notice of a proposed signing: it takes six weeks for the preparation and signing of a Full Powers instrument.
5. It is not UK practice to issue Full Powers for treaties constituted by exchanges of notes, unless the other party insists. However, a non-FCDO minister or official should not sign an exchange of notes without the specific authorisation of the Foreign, Commonwealth and Development Secretary.
6. If lead government departments are planning signature of a treaty other than by an in-person ceremony please consult with FCDO Treaty Section so they can provide advice on the process.

## **CHECKLIST FOR THE SIGNATURE OF BILATERAL TREATIES IN LONDON BY NON-FCDO MINISTERS**

7. When non-FCDO ministers are authorised by the Foreign, Commonwealth and Development Secretary to sign treaties it is the lead government departments responsibility to arrange the signing ceremony. Treaty Section will attend and

officiate at ceremonies in the UK. If Treaty Section attendance is not possible, they are available to give advice.

8. Treaty Section prepare the texts, and ribbon and seal them into binders for the ceremony. The latter task is done in Treaty Section's premises, usually in the presence of the FCDO and/or lead department desk officer and an official from the other state's embassy or high commission, on the last working day before the signing.
9. The signature ceremony itself is divided into three parts:

#### Before the ceremony

- a. A table of sufficient size to allow for the simultaneous signing of both copies of the treaty and display of the Full Powers should be provided. Normally only the two signatories sit at the signing table, which should be positioned to allow photographs to be taken. If possible the table, chairs, blotters, pens, treaties and Full Powers should be in place in advance of the ceremony. A "recce" a day or two before the signing could prove useful.  
**The rest of this assumes that Treaty Section are not present.**
- b. Immediately before signature takes place, the FCDO/lead department desk officer should insert the date on the English language texts and ask someone from the other side to do the same on the foreign language texts in their own language.

#### During the ceremony

- c. At the signing table the other state's representative should sit to the **right** of the UK minister.
- d. Each signatory signs first their own state's copy of the treaty, **below** their government's signature block. The UK original will mention the UK government first in the title and the signature blocks will be to the left, but to the right in the other state's original.
- e. The treaties are exchanged behind the seated signatories by those attending them. They then each sign the other state's copy of the treaty.
- f. The signatories then stand, shake hands and exchange binders. This ensures that each signatory ends up with their state's copy of the treaty. It also allows a good opportunity, if relevant, for photographs and filming.

#### After the ceremony

- g. The FCDO/lead department desk officer should ensure that they:
  - retrieve the UK original;
  - retains the other side's Full Powers (if any); and
  - records (in block capitals) the **exact** form of signature of the signatories **in pencil** under their respective signatures. **This is essential for publication**

**purposes.**

- h. All these items **must** be sent to Treaty Section for retention and publication as soon as possible after the ceremony.

**RATIFICATION OF TREATIES OVERVIEW**

10. Treaties are frequently subject to ratification, acceptance, approval, or the mutual notification of the completion of procedures. In addition, multilateral treaties may be acceded to, which is a one-step process that does not involve signature. The date of entry into force is determined by the provisions of each treaty. It is important to note that from the date a treaty enters into force for the UK, it places international obligations on the UK vis- a-vis the other party or parties. It is essential therefore that the UK is able to fulfil its obligations as from that date, and does not become legally bound until it has in place the necessary domestic powers to give effect to the terms of the treaty; otherwise it will be in breach of its international obligations. Pleading insufficiency of or incompatibility with domestic law is not, in international law, an acceptable excuse for failure to implement the terms of a treaty.
11. Accordingly, if domestic legislation is required to enable the UK to give effect to its obligations under a treaty, the legislation should be in place **before** the treaty comes into force, so that the two can come into operation at the same time. It is FCDO practice, therefore, to insist that any necessary UK legislation, for example, an Act of Parliament or Order-in-Council, must be in place before the UK ratifies or accedes to a treaty. A written assurance at Deputy Director level (known as a Letter of Legal Assurance) is consequently required from the lead department responsible for the treaty assuring the FCDO that all legislative steps will have been completed before the UK instrument of ratification or accession is deposited. This requirement applies equally to treaties which are subject to the mutual notification of completion of procedures. Following receipt of a Letter of Legal Assurance, Treaty Section will prepare the necessary instrument (of ratification, accession, etc.) or notification of completion of procedures.

**Provisional Application**

12. Treaties which are subject to ratification can contain an Article which provides for them to be applied provisionally pending their ratification and entry into force (“provisional application”). Provisional application may be either from signature or following notification of the parties intent to provisionally apply the treaty. The United Kingdom uses provisional application on an exceptional basis. Provisional application is not, and cannot be used as, a means of bypassing Parliamentary procedures (nor is it a substitute for the application of the standard international rules and processes for securing full legal entry into force of treaties). As with ratification, a Letter of Legal Assurance will need to be provided to the FCDO confirming that all legislative steps will have been completed before the United Kingdom agrees to provisionally apply a treaty. It is essential that departments consult FCDO legal advisers and/or International Agreements policy team at the earliest possible opportunity when considering the inclusion of provisions allowing for provisional application in a treaty.



## LAYING BEFORE PARLIAMENT AND PUBLICATION

13. As soon as possible after signature, a copy of the treaty is sent to the Government Printer to be published as a command paper for presentation to Parliament.
14. Publication is arranged by Treaty Section. Printing, proof-checking and laying can take several months. If it is necessary to ratify a treaty within a certain period Treaty Section should be alerted in good time so that the necessary arrangements can be made for laying and publishing.
15. Under Part 2 of the Constitutional Reform and Governance Act 2010 (CRaG) no treaty (except those listed below) that is subject to ratification, acceptance, approval, the mutual notification of completion of procedures, or to which the UK intends to accede, can be brought into force unless it has been laid before Parliament for 21 sitting days without either House having resolved that the UK should not demonstrate its consent to be bound (e.g. ratify, accede). Treaties are laid before Parliament in one of the following series:
  - **Country Series** - for bilateral treaties;
  - **Miscellaneous Series** - for multilateral treaties;
  - **Treaty Series** - when a treaty has entered into force for the UK (whether on signature or following ratification, accession, etc.) it is published in the Treaty Series.
16. Part 2 of the CRaG Act does not apply to the following treaties:
  - A treaty for which an Order-in-Council may be made under section 158 of the Inheritance Tax Act 1984 (double taxation conventions), section 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation arrangements), or section 173 of the Finance Act 2006 (international tax enforcement arrangements).
  - A treaty in relation to which an order may be made under paragraph 66 of Schedule 19 to the Finance Act 2011 (bank levy: arrangements affording double taxation relief), or any treaty referred to in section 218(1) of the Finance Act 2012.
  - A treaty concluded (under authority by the government of the United Kingdom) by the government of an Overseas Territory, or any of the Crown Dependencies.

## RESERVATIONS, INTERPRETIVE DECLARATIONS AND OBJECTIONS

17. A reservation is a formal statement by which a state seeks to exclude or modify a provision in a multilateral treaty in its application to that state. Treaties sometimes provide that no reservations or only specified reservations may be made. An interpretive declaration indicates a state's interpretation of a provision. It does not seek to exclude or modify the treaty provisions. When possible it is usually preferable to make an interpretive declaration rather than a reservation. But the dividing line between them is not easy to draw. A reservation which is 'disguised' as an interpretive declaration is still a reservation. What matters is its substantive effect. The UK aims to keep reservations to a minimum, but sometimes they are necessary for legal or policy reasons. A reservation must be made in the instrument of ratification, acceptance or approval. If a reservation was made on signature, it should be confirmed in the instrument of ratification, acceptance or approval. The full text can accompany the instrument in a separate note, particularly where long or there are numerous reservations. An objection is a notification by a state, almost always to the depositary, that it objects to a reservation made by another state. It is also possible, although less common, to notify opposition to an interpretive declaration, sometimes with a corresponding interpretive declaration.
  
18. The effect of a reservation is a complex legal matter. As with all matters concerning reservations or interpretive declarations, FCDO Legal Advisers must be consulted. The responsibility for drafting a reservation, interpretive declaration or objection falls to the lead department, in consultation with FCDO Legal Advisers. A reservation or interpretive declaration may be made either at signature or ratification. If a reservation is made at signature, it must be repeated at ratification. This is not necessary for an interpretive declaration, but repetition is desirable. An objection is made at or after ratification (or its equivalent). When the UK is considering ratifying a treaty it is necessary to examine the reservations made by other States in order to decide whether to object to any of them. After the UK has ratified a treaty, it should continue to examine new reservations made by other States, in case it wishes to respond to them. The nature of the response raises difficult political and legal issues in which legal advice must always be sought. Treaty Section and FCDO Legal Advisers must be consulted immediately when notifications of reservations, interpretive declarations, or objections are received by a lead FCDO policy department or other government department. There is a deadline of twelve months by which objections should be made.

### **(iii) EXPLANATORY MEMORANDA (EMs)**

1. Since the coming into force of the CRAg Act in 2010, any treaty laid before Parliament under Part 2 of the Act must be accompanied by an Explanatory Memorandum (EM).
2. Examples are available on [GOV.UK](https://www.gov.uk), laid with the text of the treaties in the Country and Miscellaneous Series of command papers.

## **GUIDELINES ON EMs FOR TREATIES**

### **Introduction**

3. An EM brings to the attention of Parliament the main features of the treaty with which it is laid. The aim of an EM is to improve the information about treaty matters which is provided to Parliament by the Executive.

### **When an EM should be produced**

4. An EM should be produced for all treaties which are subject to ratification, accession, acceptance, approval, or the mutual notification of completion of procedures. The EM should be laid at the same time as the Miscellaneous or Country Series command paper.

### **When an EM is not required**

5. An EM will not be required for a treaty which enters into force on signature and will be published first as a command paper in the Treaty Series. Nor is an EM required for the categories of treaties set out above to which Part 2 of the CRAg Act does not apply (section (ii) paragraph 14), which are not published as command papers until they enter into force, being subject to scrutiny by Parliament when the Order-in-Council incorporating their provisions into UK law is debated.

### **Lead responsibility**

6. The department with the main policy interest in a particular treaty will take responsibility for the preparation of the EM. **All EMs must be cleared by FCDO Legal Advisers prior to signature by the relevant lead departmental Minister.** Following signature Treaty Section will lay the EM at the same time as the command paper to which it refers. Treaty Section needs the original signed copy of the EM, a copy in PDF and in Word odt format (because it is subsequently uploaded onto GOV.UK).

### **Form of an EM**

7. An EM should bear the full title of the treaty to which it refers. It should also include the command paper number. The amount of detail provided will vary from case to case depending on the length and complexity of the treaty.

8. The EM template should not be amended. Where a section is not applicable to the treaty in question this should be stated explicitly.
9. Departments should use the EM template published below.

## STANDARD EM TEMPLATE

*Please remove all comments in red and black italics from your final draft.*

**Explanatory Memorandum on [title of Treaty]**

**Title [title of Treaty, identical as above]**

**Command Paper No [leave blank - will be added by Treaty Section]**

### 1. Introduction

1. This explanatory memorandum has been prepared by [Name of Lead Department] and is laid before Parliament as an un-numbered Act Paper.

### 2. Subject matter and purpose of the Treaty

1. *[Summarise the subject matter and set out the Treaty's policy objectives. If referring to other parts of the Explanatory Memorandum, refer to specific subsections.]*

### 3. Background

1. *[For background, you should give relevant information to set the Treaty in context. In particular, mention:*
  - *why is the Government entering into this Treaty?*
  - *if there are related instruments, give details and explain how they relate to each other;*
  - *give details of the counterparty/ies to the Treaty where necessary e.g. if an international organisation, regional economic integration organisation or other grouping of States (e.g. note if States will be ratifying at different times);*
  - *where the Treaty has been negotiated within an international forum (e.g. Council of Europe, Hague Conference on Private International Law), give details.]*

#### 4. **Content**

1. *[Explain the key parts of the Treaty and its impact. The description should be sufficient to enable Parliament to understand the substance of the Treaty and the benefits and burdens which are likely to arise from UK participation.]*
2. *Set out details of any framework established by the Treaty. In particular, set out (using sub-headings if necessary):*
  - *entry into force and term of the Treaty;*
  - *any termination or withdrawal provisions and governance arrangements, including dispute resolution and review processes;*
  - *Whether there is a mechanism by which the Treaty can be amended, and if so, whether amendments will be subject to scrutiny under the Constitutional Reform and Governance Act 2010 (CRAG). If there are no amendment provisions or the amendment provisions do not necessarily require CRAG please state the following:*
    - *“A treaty may be amended by agreement between the parties. The terms of a treaty, including those on the method of consent to be bound (e.g. ratification), are subject to negotiation on a case by case basis with treaty partners. The Government will comply with the requirements of the Constitutional Reform and Governance Act 2010 in relation to any treaty amendment which does require ratification.”.]*

#### 5. **Implementation**

1. *[Where applicable, give details of any relevant existing domestic legislation, any legislation required to be enacted, or other necessary implementing measures before the Treaty can enter into force and how that legislation or measure will be brought into effect.]*

#### 6. **Territorial Application**

1. *The territorial application of this Treaty is [detail the jurisdictions in each of the Crown Dependencies and Overseas Territories (CDs/OTs) to which the Treaty, or a specified part of it, extends, using the appropriate text below. Alternatively, state that the Treaty applies to metropolitan UK only.]*

[The language in the below table may be used as a guide to completing this section. Please complete in a narrative rather than tabular format.]

CD/OT Participation	EM Text
<p>CDs/OTs to be covered by the Treaty, but currently those CDs/OTs do not have domestic implementing measures in place.</p>	<p><b>It is intended that this Treaty [or parts of it [specify]] will be extended to [insert names of relevant CDs/OTs] [once the necessary implementing measures, e.g. legislation, are in place]. [The Lead department] is continuing to work with [insert name of relevant CD/OT] in this regard.</b></p> <p>[The [Lead Department] will work with any CD and OT that wishes this Treaty to be extended to it in future.]</p>
<p>CDs/OTs to be covered by the Treaty, has domestic implementing measures in place, and has assured the Lead department that extension to the CD/OT can take place on UK ratification.</p>	<p><b>The territorial application of the Treaty [or parts of it [specify]] extends to the [insert name of relevant CDs/OTs].</b></p> <p>[This will take effect immediately upon entry into force/provisional application of this Treaty] or [otherwise explain timing of extension]</p>

## 7. Financial

1. [What are the direct financial costs and implications to the UK of implementing the Treaty? Include any financial implications arising from Joint Committee commitments.]

**Example:** Public funding will be required to meet the obligations for managing this Treaty and attending periodic Joint Committee meetings, which would include travel costs.

**Where no financial costs:**

**Example:** There will be no direct financial implications beyond those needed to cover the process of ratifying this Treaty.]

## 8. Human Rights

1. [Set out any significant human rights implications, including the compatibility of the Treaty's provisions with the UK's international human rights obligations. Where the Lead Department is of the view that there are no significant implications, this must be stated. If implementation of the Treaty will require legislative changes with significant human rights implications this must also be stated. Where significant implications are listed, the Treaty must be brought to the attention of the Joint Committee on Human Rights; this should be noted in the EM.]

9. **Reservations and Declarations**

1. *[If a reservation or declaration is made at the time of signature of the Treaty, this should be set out. If, after the EM has been laid, it is decided to make any additional reservations or declarations, Parliament should be informed by laying a supplementary EM before ratification, acceptance, approval or accession. The supplementary EM should contain a cross-reference to the original command paper laid in connection with the Treaty.]*

10. **Consultation**

1. *[This section should summarise the nature of consultation undertaken with Devolved Administrations, Crown Dependencies and Overseas Territories and other stakeholders such as the business community or special interest groups and the response.*

*Devolved Administrations (DA)*

2. *Depending on the content of the Treaty, consider the options below as a basis. Please complete in a narrative rather than tabular format. Where you indicate that a policy area within the Treaty is devolved, or will impact on a devolved area, describe what this is, mindful of the different devolution settlements across the UK.*

	<b>EM text</b>
<b>Treaty covers subject matter that is devolved; it <i>may</i> also cover subject matter that is reserved.</b>	This Treaty relates to [describe relevant policy area[s]] which is/are (a) matter(s) devolved to [Scotland, Northern Ireland and Wales], and the UK Government consulted the Devolved Administration(s) on the drafting of this Treaty and shared the relevant draft text in advance of signature.
<b>Treaty covers subject matter that is reserved but has DA implications</b>	This Treaty is not considered to relate to a devolved matter, however as it is likely to impact upon [describe relevant area[s]] which is/are [a] devolved area[s], the UK Government consulted the Devolved Administrations on the drafting of this Treaty and shared the relevant draft text in advance of signature.
<b>Treaty covers subject matter that is fully reserved with no DA implications</b>	The policy content of this Treaty is [describe], which relates fully to [a] reserved matter[s], with no implications for the DAs, and the UK Government has not consulted the Devolved Administrations on the drafting of this Treaty.

3. *Describe the nature of consultations with the Devolved Administrations, including the focus of discussions and responses (to the extent possible).*

## *Crown Dependencies and Overseas Territories*

4. *Where the Treaty will extend to specified Crown Dependencies and/or Overseas Territories, set out the nature of those consultations and the response, and whether draft text has been shared in advance of signature.*

## *Other stakeholders*

5. *Where consultation has been conducted with other stakeholders, e.g. the business community or special interest groups, set out the nature of those consultations and the response.]*

## **11. Provisional Application**

1. *[Where not relevant, delete this section and heading. Where provisional application is proposed explain the basis for doing so, and when it is envisaged that the Treaty will enter into force.*

**Example:** *In accordance with Article [X] of the Treaty, the UK and [other party] agree to apply the Treaty provisionally from [x date]. The parties will bring this Treaty into force as soon as [for e.g. [name of other party] has completed its domestic procedures.]*

## **12. Ministerial Responsibility**

1. The Secretary of State for [Lead Department] has overall responsibility for [insert policy area to which the Treaty relates] and for this Treaty. [The Secretary of State for [other department] also has as a policy interest.]
2. The Secretary of State for Foreign, Commonwealth and Development Affairs has overall responsibility for [UK policy relating to the UK's relations with [State] or the conclusion and implementation of treaty obligations].

## **Sign-off**

Minister's Name

Minister's Role



## **(iv) MEMORANDA OF UNDERSTANDING (MoUs)**

### **TERMINOLOGY TO BE USED IN THE DRAFTING OF MOUs AND OTHER ARRANGEMENTS TO INDICATE THAT THEY ARE NOT TREATIES**

1. The document should not be titled or referred to as an Agreement. The word agree and its derivatives should be avoided. Say instead the "Participants enter into arrangements" or "have reached the following understandings".
2. The provisions should be cast as expressions of intent rather than as obligations in order to avoid it being a treaty. Certain words should never be used. Alternatives are below. Further advice is available from FCDO Legal Advisers.

<b>DO NOT USE</b>	<b>DO USE</b>
article	paragraph
agree	accept/approve/decide
agreement/ undertaking	arrangement/understanding
authoritative/authentic	equally valid
clause	paragraph
conditions	provisions
continue in force	continue to have effect/continue in effect or operation/continue to apply
done	signed
enter into force	come into operation/come into effect
mutually agreed	jointly decided
obligations	commitments
parties	participants
preamble	introduction
rights	benefits
have the right	be permitted to
shall	will

undertake /agree/undertake to	carry out/decide/will
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**MOU SPECIMEN PARAGRAPHS**

3. The following are specimen paragraphs covering entry into operation/effect:

*"This Memorandum will come into operation on signature and will continue in operation until terminated by either participant giving six months' written notice to the other."*

*"This Memorandum of Understanding will come into effect on the date of the later Government notification and will continue in effect until terminated by either Government on six months' written notice."*

4. The following is a specimen form of a signature paragraph:

*"The foregoing record represents the understandings reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of..... upon the matters referred to therein.*

*Signed in duplicate at ..... on ..... in the English and ..... languages, both texts having equal validity.*

[NB "authoritative" or "authentic" should not be used]

*For the Government of the  
United Kingdom of Great Britain  
and Northern Ireland:*

*For the Government of [State title]:*

**FORM OF WORDS TO BE USED IN AN EXCHANGE OF NOTES  
RECORDING AN UNDERSTANDING**

5. The opening paragraph should be on the following lines:

*"I have the honour to refer to discussions which have taken place between our two Governments concerning..... As a result of these discussions it is the understanding of the Government of the United Kingdom that the following arrangements will apply: ....." "*

6. The rest of the Note should use "will", rather than "shall". The concluding paragraph should read:

*"If the arrangements set out above are acceptable to the Government of ..... I have the honour to suggest that this Note and Your Excellency's reply to that effect will place on record the understanding of our two Governments in this matter, which will come into operation on the date of your reply."*

**Reply Note**

*"I have the honour to acknowledge receipt of your Note dated ..... concerning ..... and to confirm that the arrangements set out in your Note are acceptable to the Government of ..... and that your Note and this reply will place on record the understanding of our two Governments in this matter, which will come into operation on today's date. "*

If the exchange of notes is in two languages, the translations should be matched and the reply note should repeat the text of the initiating note in translation (see below):

*"I have the honour to acknowledge receipt of your Note dated ..... concerning ....., which reads as follows:*

[Insert text of initiating note in translation]

*I have the honour to confirm that the arrangements set out in your Note are acceptable to the Government of ..... and that your Note and this reply will place on record the understanding of our two Governments in this matter, which will come into operation on today's date."*

## **(v) DEVOLVED ADMINISTRATIONS**

1. Under the devolution legislation, the UK government remains responsible for international relations, and the FCDO continues to be responsible for the foreign policy of the UK and its constituent parts. As a consequence the UK government alone has the power to enter into treaties or other international agreements binding on the UK in international law.
2. But the UK government recognises that the devolved administrations will have an interest in international policy making in relation to devolved powers. Furthermore, under the devolution legislation the devolved administrations are responsible for observing and implementing international obligations which relate to devolved matters.
3. To ensure effective co-operation in international matters, the UK Government and the devolved administrations have agreed the international relations concordat which covers, amongst other areas: the exchange of information, formulation of UK policy and the conduct of international negotiations, implementation of international obligations and co-operation over legal proceedings.
4. Under the terms of the concordat UK government departments must consult the devolved administrations over the formulation of the UK position in international negotiations on devolved matters, must involve the devolved administrations in negotiations of international commitments relating to devolved matters and formally notify the devolved administrations once they are agreed. Such notification should take place as soon as a treaty has been concluded, to allow sufficient time for the devolved legislatures to make any necessary legislation prior to ratification. The concordat provides for apportioning quantitative obligations and there is a provision for the UK government to pass financial penalties to the devolved administrations where they default on an agreed liability.

## **EXTRACT FROM THE CONCORDAT ON INTERNATIONAL RELATIONS\***

### **Formulation of UK policy and conduct of international negotiations**

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.

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 Council<sup>5</sup>).

The devolved administrations will consult the FCO in advance about any contact, correspondence, or proposal that is novel or contentious, might create a contingent international liability or may have implications for international relations.

Where international negotiations bear directly on devolved matters, it may be appropriate for Ministers or officials from the devolved administrations to form part of a UK negotiating team. The role of Ministers or officials from the devolved administrations will be as part of a UK team to support and advance the single UK negotiating line which they will have played a part in developing. The UK lead Minister will retain responsibility for the negotiations and will determine how each member of the team can best contribute to securing the agreed position. In appropriate cases, and by agreement with the FCO (or where appropriate another lead UK department) Ministers or officials from the devolved administrations could speak for the UK in international meetings.

<sup>5</sup> Paragraph 10 of the British-Irish Council section of Strand 3 of the Agreement States that "it will be open to two or more members [of the British-Irish Council] to develop bilateral or multilateral arrangements between them. Such arrangement could include, subject to the agreement of the members concerned, mechanisms to enable consultation, co-operation and joint decision making on matters of mutual interest; and mechanisms to implement any joint decisions they may reach."

\* All references to the FCO in this extract should be read as FCDO

## **Implementation of international commitments**

Under the devolution legislation, the devolved administrations are responsible for observing and implementing international obligations which relate to devolved matters<sup>6</sup>. They are similarly responsible in areas where they or the UK Government have made commitments under informal instruments<sup>7</sup>. In common with other parts of the UK, the devolved administrations expect to observe the terms of these informal instruments which have been entered into in good faith. The FCO or other lead UK Department will formally notify the devolved administration of any new international commitment concerning devolved matters which it will be the responsibility of the devolved administration to implement (although the arrangements described in paragraphs 2-4 should ensure that the devolved administrations are already aware of new commitments). Such notification should take place as soon as the instrument has been concluded in order to allow sufficient time for the devolved legislatures to make any necessary legislation prior to ratification.

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 administration<sup>8</sup>. The size of the devolved administrations' shares will be a matter for negotiation, taking into account the extent of the powers of the devolved legislatures and administrations and the range of measures relating to devolved and non-devolved matters which might be taken to fulfil an obligation. The devolved administrations must be consulted before any order is made to apportion their share of such an obligation, and the UK Government has made it clear to Parliament that it would expect to use its best efforts to reach agreement with them.

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<sup>6</sup> It is essential that the UK Government is in a position to implement international obligations it has undertaken in good faith. The UK Government therefore has power to ensure that the devolved administrations take action to give effect to the UK's international obligations and do not take actions which would be incompatible with these obligations. Section 58 of the Scotland Act 1998, section 26 of the Northern Ireland Act 1998, and section 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.

<sup>7</sup> The term "informal instruments" covers international instruments which have no binding form 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".

<sup>8</sup> 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.

It will be for the devolved administration and the FCO, or other lead OGD, 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 OGD 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 OGD 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.

The UK Government will, under normal circumstances, not ask the UK Parliament to legislate in any area for which legislative competence has been devolved except with the agreement of the devolved legislature. But instances may arise, for reasons such as urgency, where full consultation and agreement is impractical. The UK Government intends, for example, to continue the practice of implementing UN Security Council Resolutions by means of Orders in Council under the United Nations Act 1946<sup>9</sup>. The Foreign Secretary will remain the responsible authority for the preparation of such orders.

*(Memorandum of Understanding and supplementary agreements on Devolution between the United Kingdom Government, Scottish Ministers and the Cabinet of the National Assembly for Wales, Cm 4444 of October 1999, pp. 33-35)*

<sup>9</sup> **Despite the general devolution of the functions of observing and implementing international obligations, powers under any Order in Council made under section 1 of the 1946 Act may be exercised concurrently in or as regards Scotland by UK Ministers.**

## (vi) APPLICATION OF TREATIES TO THE CROWN DEPENDENCIES AND BRITISH OVERSEAS TERRITORIES

### Crown Dependencies

1. The Crown Dependencies comprise of the Bailiwick of Jersey, the Bailiwick of Guernsey, and the Isle of Man. The Bailiwick of Guernsey comprises of three separate jurisdictions: Guernsey (which includes the islands of Herm and Jethou); Alderney; and Sark (which includes the island of Brecqhou).
2. The Crown Dependencies are **not** part of the United Kingdom but are self-governing dependencies of the Crown with their own legislative assemblies and systems of law and administration. They have no representation at Westminster. The United Kingdom government is responsible for the defence and international relations of the Crown Dependencies and the Crown is ultimately responsible for their good government.
3. The Crown Dependencies are not sovereign States in their own right. They are instead recognised internationally as “territories for whose international relations the United Kingdom is responsible”. This means that the UK can sign treaties on their behalf. When the UK is involved in the negotiation of any treaty (multilateral or bilateral) which could apply to the Crown Dependencies, or is considering signing a treaty already adopted, the **Crown Dependencies Team, Ministry of Justice**, who are responsible for managing the constitutional relationship between the UK and the Crown Dependencies, must be informed as early as possible so that the lead government department can consult the Crown Dependencies with input from the Ministry of Justice. When undertaking this consultation the lead department should remember that each Crown Dependency is unique and may comprise of a small administration, therefore all steps possible should be taken to ensure consultations are conducted in an appropriate manner given the resources available to each Crown Dependency. The Crown Dependencies must be allowed a proper length of time to consider the implications of having any treaty extended to them; eight weeks is often considered a minimum.
4. More information on working with the Crown Dependencies on treaties can be found in the Ministry of Justice How-To guides on the GOV.UK [Crown Dependencies Guidance](#) page.

### Overseas Territories

5. It is equally important that the Overseas Territories are similarly consulted where a treaty is being negotiated or consideration is being given to the signature of a multilateral treaty which could apply to them. The appropriate UK government department(s) responsible for the constitutional relationship with the relevant Overseas Territories (see below list) must be informed as early as possible so that the lead department for the treaty can consult the Overseas Territories with their input. When undertaking this consultation the lead department should remember that the Overseas Territories vary significantly and



may comprise of a small administration, therefore all steps possible should be taken to ensure consultations are conducted in an appropriate manner given the resources available to each Overseas Territory. The Overseas Territories must be allowed a proper length of time to consider the implications of having any treaty extended to them; eight weeks is often considered a minimum.

6. The following departments are responsible for the constitutional relationship with the territories listed below:

- Ministry of Defence (Air), Sovereign Base Areas Team: Akrotiri and Dhekelia
- FCDO, Europe Directorate, Gibraltar Unit: Gibraltar
- FCDO, Overseas Territories Directorate: all other Overseas Territories

7. The British Overseas Territories comprise:

Anguilla  
Bermuda  
British Antarctic Territory  
British Indian Ocean Territory  
British Virgin Islands  
Cayman Islands  
Falkland Islands  
Gibraltar  
Montserrat  
Pitcairn, Henderson, Ducie and Oeno Islands  
St Helena, Ascension and Tristan da Cunha  
Sovereign Base Areas of Akrotiri and Dhekelia  
South Georgia and South Sandwich Islands  
Turks and Caicos Islands

### **Intra-UK Arrangements**

8. Because the Overseas Territories and Crown Dependencies do not have international legal personalities separate from the UK, it is not possible for the UK to enter into internationally legally binding agreements with them, or for Overseas Territories and Crown Dependencies to do so among themselves, and any such arrangements should take the form of an MoU (taking care to be drafted using MoU terminology).
9. All MoUs concerning the Overseas Territories should be sent to the relevant department responsible for the specific Overseas Territory (see above), and all MoUs concerning the Crown Dependencies should be sent to the Ministry of Justice Crown Dependencies Team, for review as part of the clearance process.

## **Entrustments - Delegation of treaty-making powers to Crown Dependencies and Overseas Territories**

10. Occasionally a Crown Dependency or an Overseas Territory may wish to conclude a treaty in its own name. This involves a delegation of authority through what is known as a Letter of Entrustment to commence negotiations and conclude a treaty.
11. Overseas Territories request a Letter of Entrustment from the FCDO; Crown Dependencies request a Letter of Entrustment from the Ministry of Justice. All relevant government departments must be consulted on the UK response to an entrustment request. FCDO co-ordinates the entrustment process in respect of the Overseas Territories and the Ministry of Justice co-ordinates the entrustment process in respect of Crown Dependencies.
12. For the Overseas Territories, if the FCDO lead directorate/department for the relevant Overseas Territory is content, FCDO Overseas Territories Directorate (OTD) may draft the Letter of Entrustment text, consulting with FCDO Legal Advisers for their clearance. The Ministry of Justice drafts the Letter of Entrustment text in respect of Crown Dependencies.
13. If the entrustment request is approved for an Overseas Territory then the Letter of Entrustment is signed by the Foreign, Commonwealth and Development Secretary or an FCDO Minister. If the entrustment request is approved for a Crown Dependency then the Letter of Entrustment is signed by the Lord Chancellor or a Ministry of Justice Minister.
14. For the Overseas Territories, the FCDO lead directorate/department should send the Letter of Entrustment to the relevant Overseas Territory Governor, to be conveyed to the territory's head of government. For the Crown Dependencies the Ministry of Justice sends the Letter of Entrustment to the relevant Crown Dependency Chief Minister.
15. Letters of Entrustment tend to include conditions limiting potential risks or liability of the UK. For example, the letter may state that the UK is not responsible for meeting any obligations and commitments arising from agreements concluded under entrustment, and that the proposed treaty text negotiated under entrustment must be submitted to the UK for approval before signature. This approval is ordinarily granted following review/consent from relevant UK departments to the final text. FCDO co-ordinates the treaty text approval process in respect of the Overseas Territories and the Ministry of Justice co-ordinates the treaty text approval process in respect of Crown Dependencies.
16. The UK may also require that the preamble to the treaty should state that it has been concluded, 'with the consent and authority of the Government of the United Kingdom of Great Britain and Northern Ireland'!

## (vii) GLOSSARY

**Acceptance/Approval:** have the same legal effect as ratification.

**Accession:** single act whereby a state expresses its consent to be bound, instead of signature followed by ratification. Accession is only used in the case of multilateral treaties.

**Agreed minute:** may record decisions reached between two delegations, or, may be annexed to a treaty to deal with administrative details or interpretations. In some cases may be used as the title for a treaty or an MoU.

**Agreement:** the usual title for a bilateral treaty. Sometimes used for a multilateral treaty.

**Contracting State:** means a State which has consented to be bound by a treaty *whether or not the treaty has entered into force*.

**Convention:** a term frequently employed for treaties to which a large number of States are parties. In bilateral relations it is often applied to treaties of a technical or social character, e.g. conventions on social security or double taxation.

**Exchange of Notes (constituting a treaty):** may be used to make a new treaty, to modify, amend, terminate or extend an existing one. Exchanges of Notes are also often used by parties to a bilateral treaty to notify one another of the completion internal procedures and to bring the treaty into force. The Exchange of Notes consists of an exchange of diplomatic correspondence in formal terms between a Minister for Foreign Affairs, his deputy or a senior official and an Ambassador/High Commissioner or Charge d'Affaires. Sometimes they can be in the third person (notes verbales). Notes are drafted in consultation with FCDO Legal Advisers, and it is customary for both Notes to be approved in draft by the governments before they are exchanged (see also page 18 on the use of exchanges of notes for non-binding understandings). The term Exchange of Letters is sometimes used interchangeably with Exchange of Notes.

**Final Act:** a formal statement or summary of the proceedings of an international conference. Treaties drawn up as a result of the conference will be attached to the Final Act. Signing the Final Act, however, does **not** constitute consent to be bound by such treaties.

**Full Powers:** a formal document signed by the head of state or government or the Foreign Minister empowering the person (or persons) named to sign a treaty on behalf of that state.

**Initialling:** signifies provisional assent to the text of a treaty by delegates following negotiations.

**MoU or arrangement:** a form frequently used to record informal arrangements between States on matters which are inappropriate for inclusion in treaties or where the form is more convenient than a treaty (e.g. for confidentiality). They may be drawn up as a single document using non-treaty terms, signed on behalf of two or more governments, or consist of an exchange of notes or letters recording an understanding reached between two governments.

**Notification of completion of internal procedures:** bilateral treaties are sometimes signed before a government has the necessary legislation in place to enable it to implement the provisions. In such cases the text may provide for each state to notify the other when the internal procedures required to be undertaken (e.g. an Act of Parliament or Orders-in-Council) have been completed. Such treaties usually come into force on the date of the note containing the later of the two notifications. They have the same effect as ratification. Treaty Section prepares these notifications.

**Party:** means a State which has consented to be bound by the treaty **and** for which a treaty is in force.

**Procès-verbal:** in the treaty context is most commonly used to set out agreed corrections to a treaty already signed.

**Protocol:** usually denotes a treaty amending or supplementing an existing treaty, but, more unusually, can stand alone.

**Ratification:** follows signature and signifies the consent of a state to be bound by the treaty.

**Signatory:** not a precise term. Should **not** be used when referring to a state which is a party to a treaty through ratification or other means.

**Signature:** is the act whereby a state expresses its agreement in principle with a treaty, but not its consent to be bound by it (simple signature), unless the treaty provides that it will come into force on signature (definitive signature). A state which has signed a treaty which is subject to ratification is not obliged to ratify. However, it is obliged to refrain from acts which would defeat the object and purpose of the treaty, until it shall have made its intention clear not to become a party to the treaty. UK policy is in general not to sign without a reasonably firm intention to ratify.

**Treaty:** an agreement concluded between States (or with or between international organisations) in written form and binding in international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. It does not have to be signed, although it usually is.

## (viii) FCDO TREATY SECTION CONTACT DETAILS

Address: Treaty Section  
Legal Directorate  
Room WH.2.143  
FCDO  
London  
SW1A 2AH

Treaty Section is made-up of two teams:

**Treaty Procedures Team** manage the production of a treaty for signing in the UK and advise on procedures to be followed when a treaty is signed overseas. After signing we arrange the publication and laying before Parliament of treaties as command papers (with EMs as appropriate). We also advise on the form of draft treaties and related matters such as the production of Full Powers and instruments of ratification.

**Treaty Information Team** manage and maintain the UK's treaty records, available to the public as UK Treaties Online and our pages on [GOV.UK](https://www.gov.uk). We undertake the UK's responsibilities as depositary of various multilateral treaties. Upon entry into force for the UK, we arrange transfers of treaty documentation to the UK National Archives. We provide an enquiry service.

e-mail: [treatypublicenquiries@fcdo.gov.uk](mailto:treatypublicenquiries@fcdo.gov.uk)