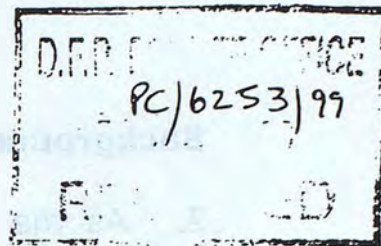


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From **ANNABEL JONES**
26 November 1999

AM/4707/99

~~MINISTERIAL CORRESPONDENCE~~ A2423/98 (S)

2 NIO - NEW POLITICAL ARRANGEMENTS FOR NIO A937/98 (S) See copy distribution below

cc DA McColmick

Mrs Moore

- 1 PS/MR HOWARTH (L&B)
- 2 PS/SECRETARY OF STATE (L&B)

POST DEVOLUTION WORKING ARRANGEMENTS: CONCORDAT BETWEEN NIO AND THE NORTHERN IRELAND EXECUTIVE COMMITTEE

Summary

Issue: Draft concordat between NIO and the Northern Ireland administration for approval.

Timing: Ideally, before devolution: the concordat should be put to the Executive Committee once it has been established.

Recommendation: The Secretary of State is invited to approve the attached draft concordat.

Introduction

This submission seeks the Secretary of State's endorsement of the draft concordat which has been drawn up to set out a framework for working arrangements between the NIO and the Northern Ireland administration after devolution. If the Secretary of State is content, the next step would be to propose it formally to the Executive Committee once it has been established.

① Mr Howarth ① Mr H
 Mr Upton
 Mr Laybourn
 Mr Sutton
 Mr Angus
 Mrs Coffey
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For information

Background

2. As the Secretary of State will be aware, there is a series of agreements between the UK Government and the devolved administrations in Scotland and Wales setting out the principles underlying relations between them. The principal agreement is the Memorandum of Understanding (MOU). In addition, four separate overarching concordats are intended to apply broadly uniform arrangements across Government to the handling of matters with an EU dimension; international relations; financial assistance to industry; and statistical work. All of the drafts refer where appropriate to devolved institutions in Northern Ireland. These documents will, therefore, need to be formally proposed to the Executive Committee once it has been established.

NIO concordat

3. Against this background, we have been drawing up a draft concordat (attached) relating to working arrangements between the NIO and the Northern Ireland administration on matters in which there is a mutual interest. This draft has been developed in consultation with Central Secretariat and the Northern Ireland Departments. Its aim is to set out some mechanisms for the handling of business between the Northern Ireland administration and the NIO and its executive agencies. In particular, it covers:

- Co-operation on matters of mutual interest, including advance notification of policy initiatives and legislative proposals which have an impact on the other's areas of responsibility;
- Regular meetings between the Secretary of State and the First Minister and the Deputy First Minister (and, as appropriate, other Northern Ireland Ministers) to discuss reserved and excepted matters, and cross-cutting issues involving both reserved or excepted and transferred matters;
- The Secretary of State's role in representing Northern Ireland interests in the UK Cabinet;
- Co-operation from the Northern Ireland administration in providing advice on invitations to the Secretary of State and other UK Ministers;
- Handling of correspondence;

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- The exercising of the Secretary of State's statutory role in relation to Northern Ireland Assembly legislation;
- The position of public bodies;
- The secondment of Northern Ireland Civil Service staff to the NIO; and
- Finance issues.

The concordat also covers mechanisms for the implementation and review of these arrangements; a formal review of the concordat will take place after one year and thereafter a five yearly intervals.

Next Steps

4. If the Secretary of State is content with these proposed arrangements, the next step would be for him to put the draft concordat to the Executive Committee. At the same time he would, on behalf of the UK Government, formally propose to them the Memorandum of Understanding and other overarching concordats. Further advice and draft letters will follow.

[Signed]

**A N JONES (MRS)
MILLBANK 26573**

CC: PS/MR INGRAM (L&B)
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MR JEFFREY
MR WATKINS
NI PERMANENT SECRETARIES
MR SHANNON
MR STEPHENS
MR LEACH
MR BELL
MR MCCUSKER
MR CRAWFORD
MR BROOKER
MRS DEVLIN

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**DRAFT 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.

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).

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 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

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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.

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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

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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.

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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

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.

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

*see
above*

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

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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.

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