

## THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

### A. SUBSTANTIVE ASPECTS

#### I. Definitions

1. In your practice, do you use the term “non-legally binding agreement”? If so, how do you define it?

*United Kingdom Government practice is to use the term “international agreement” interchangeably with the term “treaty”. Both terms are used to describe an international agreement, concluded between states or states and international organisations, in written form, and governed by international law. While they can take many forms and have a variety of names, it is the intention of the parties to create obligations under international law which is determinative of whether they constitute a treaty.*

*Treaties and international agreements are distinct from other instruments and arrangements which are not intended to be binding under international law and which contain political commitments or administrative arrangements. Such instruments are often in the form of a memorandum of understanding (or MOU), but again, can take a range of forms and have a variety of names. For example, arrangement; declaration; guidelines. The United Kingdom Government prefers the terms non-legally binding instruments or arrangements. Care should be taken to avoid a title which risks creating ambiguity about the participants’ intention not to create obligations under international law.*

*We note the definition ascribed to the term “non-legally binding agreement” for the purpose of this questionnaire, set out at footnote 1. The United Kingdom Government avoids the use of the term “agreement” for a non-legally binding arrangement or instrument. The word “agreement”, even prefaced with the term “non-legally binding”, risks immediately creating a category error. In addition, the United Kingdom Government wishes to clarify its view that non-legally binding instruments and arrangements may be made by entities which are not subjects of international law.*

2. If not, what term do you use instead (e.g. arrangements) and how do you define it?

*See answer to q1.*

3. Do you consider "Memoranda of Understanding" to be legally binding or non-legally binding instruments? Or can they be both?

*The United Kingdom Government generally uses the term memorandum of understanding to describe a non-legally binding instrument. As noted above, it is the intention of the parties to create obligations under international law which is determinative of an instrument or arrangement’s legal status. Confusingly, treaties are occasionally called memoranda of understanding.*

#### II. Distinction

4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?

*The key difference between a treaty and a non-legally binding instrument or arrangement is the intention to create legally binding international obligations. It is the United Kingdom Government’s practice to show clearly from the form of the document and its terminology the intention to create legally binding obligations or not.*

*Please find annexed to this questionnaire the United Kingdom Government’s public guidance on terminology and form of memoranda of understanding. This is part of the guidance document*

*“Treaties and Memoranda of Understanding (MOUs) Guidance on Practice and Procedures” (March 2022), available [here](#), and referred to below in response to q19.*

5. In your view, is there one (or multiple) essential element(s) typically qualifying an agreement as non-legally binding? If so, which one(s)?

*As noted above, the essential element in determining the non-legally binding status of an instrument or arrangement is the intention that it does not create legally binding obligations. The intention of the parties is mostly evidenced by the form, title, language used, modalities of signature, and certain substantive aspects (such as the absence of binding dispute settlement mechanisms). Sometimes express provisions are included that the understanding is not intended to create legal obligations. However the United Kingdom Government generally considers this unnecessary if the arrangement has been suitably drafted.*

6. Do you distinguish between “MoUs” and other types of non-legally binding agreements, such as “joint declarations of intent” or “arrangements”? If so, how?

*The United Kingdom Government considers that non-legally binding instruments and arrangements do not constitute a cohesive class. They range in form, substance, subject-matter, importance, and so on. The essential common element is that they do not create legally binding obligations.*

7. If you distinguish between different types of non-legally binding agreements, do you have different internal rules applying to them?

*N/A*

8. Do you distinguish between the type of non-legally binding agreement concluded with international organisations or States? Do you have different rules applying to non-legally binding agreements depending on whether the other side is a State or an international organisation?

*No. N/A*

### **III. Competence**

9. Who, within your State/International Organisation, has the competence to sign a non-legally binding agreement?

*Non-legally binding instruments and arrangements may be made by someone with appropriate authority and internal clearance to do so. This will vary depending on the instrument / arrangement in question.*

10. For States: Are sub-national territorial units like single federal states, provinces, municipalities or public agencies competent to conclude their own non-legally binding agreements?

*Yes, in areas where they have the competence to do so.*

For International Organisations: Are bodies/specialized agencies competent to conclude their own non-legally binding agreements (or can they sign non-legally binding agreements on behalf of the entire organisation)?

### **IV. (Indirect) Legal Effects**

11. Do you consider non-legally binding agreements capable of producing (indirect) legal effects, for example as preparatory acts for/in connection with a legally binding instrument or as interpretative guidance for such binding instruments? Would you consider non-legally binding agreements under certain circumstances as a prerequisite of a binding instrument of international law?

*As stated above, the essential element of a non-legally binding arrangement or instrument is the intention that it does not create legally binding obligations. The United Kingdom Government*

*acknowledges that a non-legally binding arrangement or instrument may be used to provide interpretative guidance to a treaty. A non-binding arrangement or instrument may also be evidence of the basis of a government decision on a particular matter and thus may be relevant in domestic court proceedings which seek to challenge that decision.*

*The United Kingdom Government does not consider it possible (or desirable) to delineate rules regulating the relationship between non-binding instruments and arrangements and any possible future treaty. This should necessarily be considered on a case-by-case basis.*

## **B. PROCEDURAL ASPECTS**

### **V. Choice of Instrument**

12. What factors influence or determine your decision whether to opt for a legally binding or non-binding agreement? For instance, do you sign non-legally binding agreements to facilitate the conclusion of a legally binding agreement in the future or do you conclude non-legally binding agreements in situations in which a legally binding agreement cannot be reached with the involved sides?

*As reflected in the question, the decision to use a treaty or a non-binding instrument or arrangement will depend on a non-exhaustive number of factors. This assessment will be carried out on a case-by-case basis. In addition to the factors noted in the question, the United Kingdom Government would add (without prejudice to other factors) the appropriateness of creating binding legal rights and obligations as opposed to political commitments.*

13. Who, within your State/international organisation, ultimately decides whether to conclude a treaty or a non-legally binding agreement?

*This will be a matter for the lead department and ultimately Ministers.*

14. What are the main differences in your internal procedure when concluding a non-legally binding agreement or a binding treaty?

*The responsibility for concluding non-legally binding instruments and arrangements lies with the lead government department. This department will take legal advice from its departmental lawyers and follow authorised procedures for adopting government commitments. The FCDO also requests that all draft memoranda of understanding be sent to the relevant FCDO thematic or geographic department for clearance. This ensures consistency in UK practice. Treaty Section does not have a formal role in respect of non-binding instruments and arrangements and so do not hold a central record of them. Lead departments are responsible for maintaining up to date records and original documents. Training is organised regularly for government officials on issues relating to both treaties and non-legally binding arrangements and instruments.*

### **VI. Formal Assessment<sup>1</sup> of Non-legally Binding Agreements**

For States:

15. In your State, is there a mandatory centralised formal assessment of non-legally binding agreements concluded by any government ministry?

*The responsibility for negotiating and concluding non-legally binding instruments and arrangements lies with the lead department. The lead department will take legal advice from its departmental lawyers and follow authorised procedures for adopting government commitments. The FCDO also requests that all draft memoranda of understanding should be sent to the relevant FCDO thematic or geographic department for clearance. There should be the same level of inter-departmental consultation as for treaties.*

<sup>1</sup> In this section, “formal assessment” refers to the internal procedure for checking the formal criteria of a draft agreement to ensure it is clearly identifiable as non-legally binding.

<p>16. If so, what Ministry/body performs this formal assessment?</p> <p><i>See above answer to q15.</i></p>
<p>17. At what time in the process of concluding a non-legally binding agreement is the formal assessment carried out?</p> <p><i>See above answer to q15.</i></p>
<p>18. If sub-national territorial units/bodies or specialized agencies are competent to conclude non-legally binding agreements (cf. question 9), are such agreements subject to the same formal assessment applicable for agreements of the (federal) government/international organisation?</p> <p>Yes</p>
<p>19. Do you have an internal standard/written guidance for formally assessing non-legally binding agreements, i.e. a law, a directive or internal guidelines?</p> <p><i>Yes, the FCDO has published guidance on gov.uk, "Treaties and Memoranda of Understanding (MOUs) Guidance on Practice and Procedures" (March 2022), available <a href="#">here</a>.</i></p>
<p>20. How do you ensure all relevant actors are aware of the requirement of a centralised formal assessment of a non-legally binding agreement?</p> <p><i>Through public and internal guidance documents, regular training, and outreach activities to colleagues across Government.</i></p>
<p>21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure?</p> <p><i>See response to q20, above.</i></p>
<p>22. Does the responsible ministry/body provide guidance to other (government) departments and agencies on best practices with respect to non-legally binding agreements (e.g. workshops, information materials on how to properly draft and conclude non-legally binding agreements)?</p> <p><i>Yes, see answers to q19 and 20, above.</i></p>
<p><b>For International Organisations:</b></p>
<p>23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation.</p>
<p><b>VII. Democratic Review/Parliamentary Participation</b></p>
<p><b>For States:</b></p>
<p>24. Is your legislature notified or consulted about the conclusion of non-legally binding agreements? If so, does parliament need to be involved for any non-legally binding agreement or are there limitations (eg only for politically significant agreements)? Who determines whether such requirements are fulfilled?</p> <p><i>There is no legislative requirement to submit non-legally binding arrangements to Parliament. It is established United Kingdom Government practice that non-legally binding instruments and arrangements are not routinely published, although some may be published on gov.uk at the discretion of the lead department. The Government has acknowledged that it may be appropriate to draw to Parliament's attention non-legally binding arrangements which raise questions of public importance. This is considered on a case by case basis.</i></p>
<p>25. If so, at what stage of the process is the legislature usually involved?</p> <p><i>See above answer to q24.</i></p>

<p>26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements?</p> <p><i>See above answer to q24.</i></p>
<p>27. If legislative participation is provided for, does the legislature have a (legal) remedy if it perceives a violation of its right to be consulted/to participate?</p> <p><i>See above answer to q24.</i></p>
<p>For <u>International Organisations</u>:</p>
<p>28. In case you have an internal directive/guideline on how to conclude non-legally binding agreements, has this document been approved by the member States/a statutory organ of the organisation?</p>
<p><b>VIII. Signature and Format</b></p>
<p>29. Is there a formal procedure to authorise the signature of a non-legally binding agreement?</p> <p><i>No. But the lead department will ensure that the necessary internal clearances are obtained.</i></p>
<p>30. Do the signatures of the non-legally binding agreement in question necessarily have to be on the same document?</p> <p><i>No.</i></p>
<p>31. Do you allow for electronic signature of your non-legally binding agreements? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of non-binding agreements instead of the exchange of physical copies?</p> <p><i>The United Kingdom Government does not consider there to be a standard rule regarding signature of such instruments and arrangements. This will vary depending upon the nature and form of the instruments / arrangement in question. The United Kingdom Government considers that the essential element is that the instrument / arrangement reflects the final understandings of, and commitments made by, the participants.</i></p> <p><i>This differs from the United Kingdom Government's position regarding the signature of treaties. The United Kingdom Government does not recognise electronic signature of treaties.</i></p>
<p>32. <u>For States</u>:</p> <p>Do you always require non-legally binding agreements to be set in your own language or do you also accept them exclusively in the partner's language / in English (or any other "neutral" language)?</p> <p><i>There is no set rule.</i></p> <p><u>For International Organisations</u>:</p> <p>What language do you usually require for the text of your non-legally binding agreements?</p>
<p>33. Do you have any formal requirements exclusively for concluding non-legally binding agreements? (e.g. using a special kind of paper only for non-legally binding agreements).</p> <p><i>There are no formal requirements for concluding non-legally binding instruments and arrangements. Lead government departments should avoid following treaty formalities, such as using treaty paper, binders, and so on.</i></p>

## **IX. Registration and Publication**

34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country?

*There is no central register/archive/database for all non-legally binding instruments or arrangements. Lead departments are responsible for maintaining an up-to-date record and original documents.*

35. If so, what entity keeps the non-legally binding agreement after signature?

*N/A*

36. Do you publish your non-legally binding agreements and are they openly accessible?

*See answer to q24 above. Some of the United Kingdom's non-legally binding instruments and arrangements are available on gov.uk.*

37. Are there certain reasons (confidentiality, security, etc.) why non-legally binding agreements can be withheld from central registration/storage or (if applicable) publication? If so, which ones?

*As regards storage, as noted above, lead departments are responsible for maintaining an up-to-date record and original documents.*

*As regards publication, as noted above, this is considered on a case-by-case basis. The need for confidentiality is one factor which may explain non-publication.*

## **X. Education/Training**

38. How do you disseminate information internally regarding the differences between binding and non-legally binding agreements? For example, are there regular workshops or training sessions with the units drafting non-legally binding agreements? Are there certain standard forms ("Model MoU"), which units can use as a drafting aid?

*See above answers to q19 and 20.*

## **C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)**

39. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern?

*A non-binding instrument or arrangement may be considered preferable where there is no need for binding obligations or where (in a case where either binding or non-binding commitments are possible) there is a need for flexibility in the handling of these commitments. This might arise, for example, where the matters dealt with are essentially of a technical or administrative character or there are detailed provisions which change frequently. Non-binding arrangements and instruments may also be preferable in matters of defence or technology where there is a need for such documents to be classified, or where they constitute subsidiary documents to fill out the details of cooperation under a treaty.*

*Although not legally binding, non-binding instruments and arrangements should be no less carefully drafted than if they were a treaty, given that it is always the Government's intention to perform all commitments, whether legally binding or not.*

40. In recent years, have you been concluding an increased number of non-binding international agreements? If so, why do you think this is the case?

*As noted, non-binding instruments and arrangements do not constitute a cohesive class. The United Kingdom does not keep a single central record of such instruments and arrangements and therefore is unable to provide numbers. However, international cooperation has deepened in recent decades, and non-binding instruments are often useful in that context for the making of practical arrangements.*

***Annex: United Kingdom Government’s public guidance on terminology and form of memoranda of understanding, part of the guidance document “Treaties and Memoranda of Understanding (MOUs) Guidance on Practice and Procedures” (March 2022), available [here](#)***

**(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
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

## 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*

*For the Government of [State title]:*

*United Kingdom of Great Britain and  
Northern Ireland:*

## 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."*