

Alexander Horne and Professor Holger Hestermeyer – Written Evidence (RTS0002)

1. This joint submission to the International Agreements Committee is based upon a research project undertaken by the authors for the Centre for Inclusive Trade Policy which concluded in 2024.¹ It considered the role of Parliament in scrutinising international agreements and proposed several ideas for reform. Both authors have practical experience of the issue having recently worked for the UK Parliament undertaking treaty scrutiny.
2. In the United Kingdom, Parliament's role in treaty-making is limited to scrutinising treaties under the provisions of the Constitutional Reform and Governance Act 2010 (CRAG). The Act partly codifies and to some extent progressively develops the so-called "Ponsonby rule" which dates back to 1924.
3. There is broad agreement that the current process of treaty scrutiny in the UK Parliament is no longer fit for purpose.
4. There are two reasons for this: first, in the last century the number, content, scope and mechanisms of treaties have changed substantially. Second, during the UK's membership of the EU some of the most complex modern treaties, namely free trade agreements (FTAs), had been concluded by the EU and effective mechanisms of parliamentary control had developed in this regard. With Brexit, these have fallen away.
5. This changed landscape of treaties raises questions regarding their democratic legitimacy. Parliaments often play an important role in the democratic legitimisation of international agreements, including free trade agreements. For example, many jurisdictions require a parliamentary consent vote on some treaties, including trade agreements (often in the form of an up-or-down vote). The current UK system fails to provide that legitimacy.
6. There is a strong argument to be made that, given the importance of treaties, treaty scrutiny should be treated the same way as other types of scrutiny (such as legislative scrutiny). In fact, as more and more areas of domestic legislation are affected and sometimes pre-determined by treaty commitments, a failure to conduct proper treaty scrutiny can impact the effectiveness of legislative scrutiny.
7. Since Brexit, Parliament has established a formal treaty scrutiny mechanism in the House of Lords and has gained significant experience in handling treaties. We believe that the time has now come to learn from

¹ H. Hestermeyer and A. Horne, [Treaty Scrutiny: The Role of Parliament in UK Trade Agreements](#), Centre for Inclusive Trade Policy, Sussex University, 22 January 2024.

this experience and reform the UK treaty scrutiny system. We have, therefore, proposed a number of reforms to improve the practice of treaty scrutiny.

8. These proposals consist of five main elements:

- a) systematic scrutiny of treaties in both Houses of Parliament;
- b) the introduction of a parliamentary consent vote in the House of Commons for significant treaties, particularly new FTAs, but also other significant treaties;
- c) ensuring the early involvement of Parliament starting with the negotiating mandate for FTAs;
- d) broadening the list of documents subject to scrutiny;
- e) to cope with the increased workload, introducing a sifting mechanism (that would be conducted in a new Sifting Committee in the House of Commons and in the International Agreements Committee (IAC) in the House of Lords) to identify treaties requiring thorough parliamentary engagement.

9. In terms of the consent vote and the enhanced scrutiny of FTAs we provide, at Annex A, the text of a simple draft Bill which would allow Parliament to insist on a consent vote for significant treaties and to introduce a special procedure for the scrutiny of new FTAs. We do not propose legislation lightly. However, having regard to the many previous parliamentary initiatives to improve the treaty scrutiny system over the past 5 years, we believe that without reform to CRAG, effective reform will not take place.

10. While we are convinced that new legislation provides for the clearest path to an effective reform of CRAG, an alternative route could be a formal constitutional concordat between Parliament and the Government introducing a clear framework for scrutiny.

11. The need for parliamentary consent to significant treaties is essential. Such a recommendation was adopted by this committee in 2021, when it concluded that Parliament's consent should be required, prior to ratification, "for all trade agreements, and other significant treaties which it draws to the special attention of the House."²

12. Our view is that a systemic change towards a parliamentary consent vote would give Parliament a powerful tool with which it can discipline Government and allow proper structures for scrutiny to develop over time. While the exchange of letters, agreed between this committee and the Government in May 2022³, is useful, governmental commitments should be fixed in a more formal manner – through legislative change and/or a

² International Agreements Committee, [Working practices: one year on](#), 17 September 2021.

³ See: [Letter from B Hayter to L Grimstone in response to letter from L Grimstone on parliamentary scrutiny of FTAs - formal exchange](#)

concordat between government and Parliament. Following such a move, the practical arrangements in Parliament can evolve through experience.

13. While we regard the systemic change towards a consent vote as a priority for reform and a paradigm shift important enough to warrant the draft Bill attached, we are under no illusion that such a shift alone will resolve all problems. For example, in terms of the current documents subject to scrutiny, there are several significant lacuna, of which we will mention three.
14. Under CRAG, only treaties subject to ratification are subject to scrutiny. However, under the Vienna Convention on the Law of Treaties (VCLT) ratification is only one of the ways in which the consent of a State to be bound by a treaty may be expressed. States can, e.g., agree to be bound by a treaty by their mere signature, which would exclude such a treaty from CRAG scrutiny. There are no legal rules obliging states to choose the ratification route for significant treaties, providing the Government with a way to avoid scrutiny if partners so agree.
15. The provisions in CRAG relating to amendments (including changes to a treaty by a treaty body set up by the treaty) are also far from clear but, unless the changes require ratification, the Government is under no legal obligation to lay any information before Parliament. The Windsor framework provides a pertinent example of how a treaty can develop – including developments that are arguably of constitutional relevance – but fall short of triggering treaty scrutiny under CRAG.
16. Finally, in recent years states have increasingly resorted to the use of legally non-binding agreements. These are often referred to as Memoranda of Understanding (MoUs), though it should be born in mind that the designation of an agreement is not decisive in determining whether it is a legally binding treaty, or whether it is not legally binding and hence not a treaty under the VCLT. Non-binding agreements are not subject to treaty scrutiny under CRAG. Such agreements, which may nonetheless contain important political commitments, are yet another loophole in the scrutiny system under CRAG. The IAC highlighted a number of issues with the Government's use of MoUs in its report on the *Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership arrangement*.
17. It is clear from the above that many important agreements can currently be entered into without any scrutiny under CRAG and we hope that the IAC focuses on this as an important area for reform.
18. We are convinced that if the abovementioned reforms, set out in paragraph 8, are adopted the process of parliamentary treaty scrutiny would be improved significantly. This would not just strengthen the legitimacy of treaties the UK becomes a party to, it would also have the

potential to improve outcomes and thereby benefit the UK as a whole. We do, however, regard the introduction of a parliamentary consent vote as a priority area for reform.

Alexander Horne and Holger Hestermeyer.⁴

Annex A

Treaties Ratification (Parliamentary Consent) Bill

A Bill to require the consent of the House of Commons to the ratification of certain treaties and related matters.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Introduction

(1) Nothing in this Bill restricts the power conferred by His Majesty's prerogative to commence, conduct negotiations towards and then conclude a treaty.

2. Treaties subject to the consent of the House of Commons

(1) After section 20(1)(c) of the Constitutional Reform and Governance Act 2010, insert:

“(d) The United Kingdom may not ratify a significant treaty unless a draft of the agreement in the terms in which it is to be presented for signature by parties to the agreement has been laid before, and approved by, a resolution of the House of Commons”.

⁴ Alexander Horne is a barrister and visiting professor at Durham University. He was previously legal adviser to the European Union and International Agreements Committees and special adviser on treaty scrutiny to both the IAC and the House of Commons Women and Equalities Committee. Holger Hestermeyer is Professor of International Law at the Vienna School of International Studies. He was founding co-Director of the Centre for International Governance and Dispute Resolution at King's College London and a past specialist adviser on international agreements and treaty scrutiny to the House of Lords European Union Committee.

(2) After section 20(9) of the Constitutional Reform and Governance Act 2010, insert:

“(b) In this section a significant treaty is one which (i) is agreed to be such by a Minister of the Crown, or (ii) which has been drawn to the special attention of either House by a select committee which has recommended that it should be debated and voted upon.

(3) The provisions of section 22(1) of the Constitutional Reform and Governance Act 2020 cannot be used in respect of a significant treaty.

3. Special procedures for trade agreements

(1) If a decision has been made by the Secretary of State to commence negotiations towards a free trade agreement, a statement must be made to both Houses of Parliament.

(2) Negotiations for that trade agreement may not proceed until the Secretary of State has laid draft negotiating objectives in respect of that agreement before Parliament.

(3) The Secretary of State must provide both Houses of Parliament, and any select committee charged by the relevant House with scrutinising trade negotiations in a manner and to an extent agreed with the committee, with written updates on the negotiations, but this does not affect the power of the Secretary of State to conduct negotiations as the Secretary of State considers appropriate.

(4) Before a Minister of the Crown moves a resolution to approve the text of a proposed free trade agreement in either House of Parliament, the Secretary of State must consult each devolved authority on the text of the proposed agreement.

(5) In the case of new free trade agreements the Secretary of State must lay an Impact Assessment which covers the economic and environmental impacts of the agreement as soon as reasonably practicable following signature.

(6) The Secretary of State will ensure that any relevant select committees under clause 3(3) shall have a reasonable amount of time to scrutinise any new trade agreement, prior to that agreement being laid under Part 2 of the Constitutional Reform and Governance Act 2010.

(7) For the purposes of this section, “free trade agreement” means an agreement between the United Kingdom and one or more partners that includes components that facilitate the trade of goods, services or intellectual property.

4. Extent, Commencement and Short title

(1) This Act extends to England and Wales, Scotland and Northern Ireland.

(2) The provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.

(3) This Act may be cited as the Treaties Ratification (Parliamentary Consent) Act 2025.

17 April 2025