House of Commons

Public Administration and Constitutional Affairs Committee

Parliamentary Scrutiny of International Agreements in the 21st century: Government Response to the Committee's Second Report of session 2023-24

Second Special Report of Session 2023–24

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Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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The committee is a select committee, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/pacac and in print by Order of the House.

Committee staff

The current staff of the Committee are Alice Baxter (Committee Specialist), Filiz Gurer (Senior Media and Communications Officer), Iwona Hankin (Committee Operations Officer), Dr Edward Hicks (Second Clerk), Gabrielle Hill (Committee Operations Manager), Vanessa Holden (Committee Specialist), Dr Philip Larkin (Committee Specialist), and Mike Winter (Clerk)

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Second Special Report

The Public Administration and Constitutional Affairs Committee published its Second Report of Session 2023–24, Parliamentary Scrutiny of International Agreements in the 21st century (HC 204) on 29 January 2024. The Government's response was received on 4 April 2024 and is appended below.

Appendix: Government Response

Introduction

The Government has carefully considered the Committee's report and the issues it raises. The Government's formal response to the Committee's recommendations and conclusions is set out below. The Committee's findings are in bold and the Government's responses are in plain text. For ease of reference, paragraph numbering follows the 'Conclusions and Recommendations' of the Committee's report (pp.59–66), though the order in which they are addressed differs.

The Government recalls its responses to a number of recent parliamentary inquiries into treaty scrutiny, including the House of Lords Constitution Committee report on parliamentary scrutiny of treaties in 2019 and International Agreements Committee reports on working practices in 2020 and 2021, and the International Trade Committee's reports on scrutiny of free trade agreements in 2018 and 2022. These add further background on the Government's consistent position on treaty scrutiny.

Government's power to enter into treaties

1. **Under the UK's constitutional arrangements, the power to negotiate and enter into international agreements is a prerogative power; as such, the power still sits notionally with the sovereign, but in practice is exercised exclusively by the executive (i.e. Ministers of the Crown). Prerogative powers are legitimately exercised by Ministers owing to the fact that they are understood to have the confidence of the House of Commons and are ultimately accountable to Parliament for any such exercise.** (Paragraph 15)

2. **While we believe that the prerogative should continue to be the source of the power for the Government to negotiate and enter into international agreements, it is clear that the manner and way in which that prerogative power is exercised needs to be more clearly and widely understood. The current arrangements grant the Government considerable power as well as flexibility in how they are used. We favour maintaining this flexibility but are alive to concerns about the potential for abuse of this power. As such, it must be understood that there are clear constitutional limits on the use of this power by ministers. The authority for a Minister, and the Government in general, to exercise the prerogative power is derived from the Government having the confidence of the democratically elected House of Commons. Each and every exercise of prerogative power by a Minister should have the confidence of, and conform to the will of, the House of Commons. It is the responsibility of all Ministers, in their exercise of these powers, to assure themselves that they are acting in accordance with the will and confidence of the House of Commons.** (Paragraph 16)

Partially agree.

The Government welcomes the Committee's recognition that the Government should continue to conduct negotiations and enter into treaties under the Royal Prerogative and maintain the flexibility in how this is used. As stated in its evidence, the Government conducts its negotiations in the national interest, seeking the best deals for the UK.

In exercising this power, any Government signing a treaty should be confident of domestic political support. Parliament has an essential role in the scrutiny of treaties, in the scrutiny of implementing legislation and in holding the Government to account for its policy decisions. The Government remains aware of this essential point in all its treaty negotiations. However, the Government does not accept that the existing framework for treaty scrutiny is insufficient. Further detail on that position is set out in this response.

Relationship between parliamentary scrutiny of treaties and parliamentary scrutiny of implementing legislation

3. **The UK is a dualist state, meaning that, in order for obligations entered into through treaties to have effect in UK law, domestic implementation is required. This is an important feature of the UK's constitutional system, ensuring that any changes to domestic law needed to implement treaties must be considered by Parliament. While treaties bind the UK as a matter of international law, they do not automatically have effect as a matter of domestic law. Often, provisions do not require new primary legislation to have effect in domestic law; delegated powers to make secondary legislation may be used, or only parts of agreements are presented to Parliament to consider as the remaining obligations can be met without legislating. Furthermore, the current process tends towards presenting Parliament with a treaty whose terms have already been finalised, leaving it with no meaningful scope to amend or even influence the terms of the treaty.** (Paragraph 22)

4. **We found the arguments that implementing legislation provides an appropriate opportunity for scrutinising and considering treaties in their entirety to be wholly unconvincing. As such, the current arrangements do not deliver a constitutionally sufficient level of scrutiny; nor do they provide an opportunity for Parliament to approve important policies which can have a significant impact on domestic affairs. *Parliament's opportunity to debate and approve or reject implementing legislation is not a substitute for proper parliamentary consideration of a treaty. Agreement to implementing legislation should not be taken to represent approval of a treaty as a whole. This should be clearly set out in the Cabinet Manual and reflected in other guidance to ministers and civil servants.*** (Paragraph 23)

Partially agree.

The Government agrees that Parliament has two separate and distinct functions in relation to treaties: first, an opportunity to scrutinise and resolve against ratification of treaties; and second, the scrutiny of any legislation necessary to implement treaties. As a result, any treaty that affects domestic law and requires legislation in order to be implemented, will not enter into force until Parliament has had an opportunity to have its say on its implementation. The Government believes the Cabinet Manual provides appropriate guidance on this.

The Government considers the existing framework for treaty scrutiny appropriate, providing sufficient flexibility to enable Parliament to undertake effective scrutiny prior to ratification of a treaty, while reflecting the position accepted by the Committee that treaty making should remain a prerogative power.

The Government notes that Parliament may request a debate on a treaty in addition to any debate on legislation. Requests must be balanced against other demands on parliamentary time. The Government seeks to accommodate where possible a debate during the 21 sitting day period for parliamentary scrutiny under the Constitutional Reform and Governance Act 2010 (CRaG). For example, the Department for Business and Trade has made a specific commitment regarding free trade agreements that should the International Agreements Committee (IAC) or Business and Trade Committee (BTC) produce a report on a new free trade agreement (FTA) after its signature and as part of this request a debate, the Government will seek to facilitate this subject to available parliamentary time. However, debates do not necessarily need to be in Government time. There are options available to both the official opposition and backbenchers in both Houses to secure time for debates.

Changing nature of treaty making

5. **Over the last century, there have been significant quantitative and qualitative changes to the nature of international agreements; they now reach into people's everyday lives in the UK and around the world. They seek not only to deal with relations between states, but increasingly to address problems which one state cannot solve alone. In many instances, treaties have, as a consequence, become more akin to domestic legislation. International agreements are now concerned with domestic as well as international affairs, and accordingly this makes them a fundamental concern for Parliament.** (Paragraph 30)

Partially agree.

The Government agrees there has been growth in multilateral treaty making over the last century. However, in their nature and impact across all areas of policymaking, treaties have remained fundamentally unchanged since the mid-20th century. For example, there have been treaties in the field of human rights such as the 1950 European Convention on Human Rights, the 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights and, in the field of trade, the 1947 General Agreement on Tariffs and Trade (GATT) and the 1994 Agreement Establishing the World Trade Organization. Moreover, treaties remain distinct from domestic legislation. As a dualist system, no treaty can, of itself, be incorporated into the UK's legal system without domestic legislation. The ability of the Government to negotiate and conclude treaties therefore does not undermine the legislative supremacy of Parliament.

Parliamentary approval of treaties

6. **Parliament is not sufficiently engaged with international agreements. The UK's parliamentary democracy operates on the basis of the dual constitutional principles of parliamentary sovereignty and parliamentary accountability. As such it must be understood that scrutiny of international agreements is a core constitutional function of the UK Parliament.** (Paragraph 31)

Partially agree.

The Government agrees that scrutiny of international agreements is a core constitutional function of the UK Parliament. However, the Government does not agree with the Committee's overarching position that engagement with Parliament is insufficient. The current arrangements enable the principles of parliamentary sovereignty and parliamentary accountability to be upheld. Further details of this position are provided in response to the specific recommendations below.

7. **Currently, there is no requirement for Parliament to approve treaties. We find this situation untenable. Parliament's approval must be sought when the Government seeks to bind or change in any material way the UK's obligations under international law.** ***We therefore recommend that, as a matter of constitutional principle, all treaties should require the explicit approval of the democratically elected House of Commons before they enter into force. To be clear, this would not change the fact that treaties are negotiated and entered into under prerogative power; instead it would make the exercise of that prerogative to enter into an agreement that places, alters or removes a legal obligation on the UK, or to withdraw from such an agreement, conditional on the explicit, active approval of the House of Commons.*** (Paragraph 32)

10. **It is clear from the evidence we received that the arrangements set out in the Constitutional Reform and Governance Act 2010 are unsatisfactory in a modern democratic society. We identified three main areas of concern. First, the legislation provides a passive role for Parliament which need only be notified of a new treaty and has only a limited power (in practice) to delay ratification. These arrangements do not provide Parliament with the opportunity to approve a treaty or not, and do not create the space for the level of scrutiny necessary for genuine democratic oversight and authorisation. Second, while many treaties are captured by the current legislation, there are several categories of treaty that are not. We firmly believe that all treaties need express parliamentary approval. Third, while we understand the historic origin of the 21-sitting day period, and accept that for some treaties it may be sufficient time for scrutiny, we are of the view that it is an arbitrary and, in many cases, insufficient period of time for the scrutiny of treaties, given their increasing complexity, and should therefore not be the default scrutiny period. In light of these findings, it is clear to us that, in order for the arrangements for entering into treaties to respect the core constitutional principle of parliamentary sovereignty, and to bring them into line with international comparators, Parliament must give its express approval to all treaties before they can be ratified or enter into force.** (Paragraph 63)

11. ***The explicit, active approval of the House of Commons should be a requirement for all treaties (legally binding international agreements) to be allowed to proceed to ratification or for it to be otherwise indicated that the UK gives consent to be bound by an international instrument. This means that the Government should not be able to proceed to ratify or otherwise indicate consent to be bound by a treaty until approval has been signified by a vote in the House of Commons.*** (Paragraph 64)

12. ***To achieve this end, we recommend that the mechanisms contained in Sections 20 to 25 of the Constitutional Reform and Governance Act 2010 are amended to implement the following arrangements in line with this principle of active approval: The***

legislation should set out that a Minister of the Crown is required to send all treaties to a parliamentary sifting committee, the composition of which will be determined by the House. This sifting committee will have 21-sitting days to recommend either:

- ***i that the treaty can proceed to the floor of the House of Commons for debate and that a vote to approve the treaty or otherwise should take place no less than 21-sitting days after this recommendation is made (standard scrutiny period); or***
- ***ii that the treaty is of such a nature that it requires enhanced scrutiny, and that an appropriate period should be set for that enhanced scrutiny (to be determined by the sifting committee) before which the treaty cannot be brought to the floor of the House of Commons for a debate and a vote (extended scrutiny period).***

In a situation where, following the expiry of the 21-sitting day sifting period, the sifting committee does not make a recommendation in accordance with either points (i) or (ii) above, the Government may bring a treaty forward to the floor of the House of Commons for a vote to approve the treaty or otherwise as soon as parliamentary time allows. (Paragraph 65)

Disagree.

The Government does not accept the Committee's conclusion that Parliament requires further powers to scrutinise the Government's exercise of Royal Prerogative powers in its treaty making.

Part 2 of CRaG strikes the appropriate balance. When scrutinising a treaty subject to CRaG, either House may object to its ratification. Parliamentary approval of treaties is more commonly found in monist States, where treaties automatically become part of domestic law. UK practice is consistent with that of other dualist states such as Canada, Australia and New Zealand – in some respects the Government's commitments to Parliament go beyond what is provided in other systems.

The current practice therefore provides the flexibility, the necessity of which the Committee has recognised, to ensure that Government can continue the important business of doing deals in the national interest while providing a mechanism for Parliament to oppose if the strength of feeling is there. Significantly, the House of Commons has never resolved against ratification using the power it already has under CRaG. To give Parliament binding votes – or vetoes – over treaties would be to fundamentally undermine the Royal Prerogative of treaty making and limit the flexibility needed to negotiate and enter into the deals that will best serve UK interests.

As the Committee has noted, the government is accountable to Parliament and holds office by virtue of its ability to command the confidence of the elected House of Commons. The consequence of these principles is not that further legislation is required. Rather, it is that Parliament has the mechanisms to properly scrutinise the Government's treaty making powers already.

13. ***The exact criteria on which this decision should be made will be for the sifting committee to determine and to set out. The purpose of this longer scrutiny period would be to allow for the relevant parliamentary committees and other interested***

stakeholders, including but not limited to devolved legislatures and administrations, to carry out inquiries and set out their findings ahead of the parliamentary debate and vote to approve the treaty, so that the full implications of a treaty can be fully understood ahead of that vote. Where a treaty would enter into force on signature alone, a draft of the treaty should be provided in the same way as for other treaties, as Parliamentary approval would still be required to sign such a treaty. (Paragraph 66)

14. ***If the Government does not wish to accept the longer period of scrutiny set out by the sifting committee, a Minister of the Crown must make a statement to the House setting out the reasons why they believe the period is not appropriate and schedule a vote in the House of Commons to override the recommendation of the sifting committee. If that vote approves the Government's motion to override the sifting committee's recommendation, the Government can then schedule a debate and vote to approve the ratification of the treaty no less than 21-sitting days after the override vote.*** (Paragraph 67)

15. **We recognise that, while rare, there may be circumstances where a treaty needs to enter into force as a matter of urgency.** ***To account for such circumstances, the amended legislation should set out the criteria under which the Government should be able to bypass the sifting committee and proceed straight to the approval debate and vote, but it must nevertheless require the Minister to make a statement to the House setting out the reasons why the urgent procedure is being used in that particular case. This provision should not be able to be used once the process set out in Paragraphs 65–67 above has started - that is once the treaty has been provided to the sifting committee.*** (Paragraph 68)

Disagree.

As set out above, the Government's view is that Part 2 of CRaG strikes the appropriate balance for scrutiny of the treaty-making power and so no legislative changes are required. Consequently, the Government rejects the significant extension to the scrutiny process that the Committee's recommendations would entail. Furthermore, the possibility of requiring two debates related to ratification of the same treaty would not be an efficient use of parliamentary time. In relation to the duration of the scrutiny period, the Government believes that 21 joint sitting days, which in parliamentary terms is likely to be a minimum of five weeks (often somewhat longer), is sufficient for Parliament to scrutinise a treaty in most cases. CRaG provides a mechanism for the Government to extend the 21 sitting day period, which allows for flexibility should it be required. Parliament has rarely debated treaties or called for an extension to the 21 sitting day period.

The Government is committed, through engagement and information sharing, to aid the scrutiny process further. This includes regular discussions between officials, in certain cases the Government sharing a signed treaty text with a relevant Select Committee and/or the House of Lords International Agreements Committee (IAC) in advance of laying formally under CRaG to help that committee in managing its scrutiny workload, or as we have done for the Australian and New Zealand FTAs, sharing with Parliament while independent scrutiny activity is conducted. It is also updating its guidance on treaty processes to ensure consistent practice across Government.

The Government believes there remains a need for the possibility to override the scrutiny process in exceptional circumstances. As foreseen under section 22 of CRaG, the default

procedure of parliamentary scrutiny under section 20 does not apply if a Minister is of the opinion that, exceptionally, the treaty should be ratified without those procedures having been met. If a Minister is of this opinion, they must lay a statement before Parliament, upholding their duty of accountability to Parliament for their treaty actions.

Just as the Government does not accept that treaties entering into force upon ratification should be subject to explicit approval of Parliament, so too it rejects that such approval apply to those treaties that enter into force upon signature alone. There has always been a subset of treaties that the Government has been able to enter into without prior parliamentary scrutiny. This provides Government with the flexibility to act with some agility, where necessary, and to respond promptly to situations of urgency, but only where the UK is already able to comply domestically with its treaty obligations. All such treaties are formally drawn to Parliament's attention when they are laid for information as command papers and Parliament may hold the Government to account for its actions in the usual ways.

16. ***We recommend that the existing requirement to provide an explanatory memorandum along with the treaty in Section 24 of the Constitutional Reform and Governance Act 2010 is retained.*** (Paragraph 69)

Agree.

The Government accepts the Committee's recommendation to continue to provide an explanatory memorandum alongside treaties laid before Parliament for scrutiny under CRaG. The Government has previously agreed, in consultation with the IAC, the information to be provided so that Parliament may effectively scrutinise key elements of a treaty. This includes how a treaty enters into force, whether it can be amended and details of implementation including any relevant existing domestic legislation and any legislation needed to be enacted. It will keep this in review and continue to work with Parliament to ensure the necessary detail is provided. The Government continues to welcome the scrutiny efforts provided by the IAC, which provides a valuable scanning function.

17. **We believe that adequate time should be available for both Houses to conduct meaningful scrutiny of treaties. However, it is a matter for the House of Lords how it chooses to arrange its business, both in its committees and chamber. We would, however, hope that a practice might develop whereby the House of Lords carries out scrutiny and holds a debate and vote on a treaty prior to that which will take place in the House of Commons under the amended legislation, so that the views of that House can be taken into account when the elected chamber votes on whether to approve a treaty.** (Paragraph 70)

It is for the House of Commons to consider the merits of establishing a committee to sift treaties before referring them to other committees for closer scrutiny. The Government would draw its attention to the setup adopted in comparable systems, particularly Australia and New Zealand. In Australia there is a Joint Standing Committee on Treaties of both Houses of the Australian Parliament. In New Zealand the Foreign Affairs, Defence and Trade Committee acts as the sifting committee, which distributes treaties laid to the relevant subject matter select committee in the New Zealand Parliament for consideration.

Parliamentary approval of amendments to treaties

19. **There is clearly potential for significant changes to be made following the conclusion of a treaty, and for those changes - for various reasons - not to be subject to parliamentary scrutiny under the current arrangements. All treaties, including any subsequent amendments or decisions of bodies made under those treaties that either modify the treaty itself or modify the UK's obligations under the treaty - regardless of whether those amendments or decisions have an impact on the domestic level - must be subject to parliamentary approval. Under the new arrangement for approval of treaties we have recommended in paragraphs 65–68 above, many amendments to treaties would be subject to a parliamentary vote. It is our view however that, moving forward, it would be impractical for Parliament to be required to debate and vote on every treaty amendment.** ***When the Constitutional Reform and Government Act 2010 is amended in line with our recommendations in paragraphs 65–68 above, it should include a mechanism to ensure that all amendments to treaties, or decisions made under them, are considered by the sifting committee. That committee can recommend, within 21-sitting days following notification by the Government, that the amendment is either:***

i ***of such a nature as to not require a debate and vote; or***

ii ***is, in its view, of such a nature that it should be subject to the process set out in paragraphs 65–67 above.***

In a situation where the sifting committee does not make a recommendation within the 21-day sitting period, it will be considered as if that committee had recommended that the measure is of such a nature as to not require a debate and vote. (Paragraph 76)

Disagree.

The Government does not agree that all treaties should be subject to the explicit approval of Parliament before they enter into force. CRaG recognises that amendments are also legally binding instruments. CRaG therefore applies equally to amendments as it does new treaties, subjecting to scrutiny those that would enter into force upon ratification.

Central depository of non-legally binding instruments (NLBIs / NBIs)

20. **While non-legally binding instruments (NLBIs) do not place legal obligations on the UK, they can impose 'political obligations' that can guide government action and even result in financial obligations being placed on the UK. The UK is an internationally trusted nation; when it makes a political commitment, this should be viewed as essentially equivalent to making a legally binding obligation. We do however recognise that NLBIs can range from the very mundane to the very significant.** (Paragraph 93)

21. **There was considerable concern expressed to us that adequate records of NLBIs were not being kept and that there is insufficient public access to those NLBIs which have been reached. We received calls for a central repository of all NLBIs to be established. We were encouraged by the Government's assurance that individual departments do indeed keep records of the NLBIs that are reached. However, we were not convinced by the argument that establishing and maintaining a single repository for non-legally binding instruments would be overly burdensome.** ***We therefore recommend the establishment of a central repository for all non-legally binding instruments, to be***

coordinated by the Foreign, Commonwealth and Development Office and made public on GOV.UK, and call for Parliament be notified of all new or updated documents added to that repository by way of a Written Ministerial Statement. (Paragraph 94)

Disagree.

Non-legally binding instruments are appropriate for concluding a statement of political intent or political undertaking, and where there is no requirement for a legally binding framework. They are valued as useful tools for arrangements to be established quickly or operate flexibly or which are confidential, such as on defence or technology.

The Government disagrees with the Committee's recommendation to establish a central repository for non-legally binding instruments. Such an approach would be impractical and, in any case, provide little value compared to existing arrangements. It would not merit the additional resources required. No single department provides oversight of non-legally binding instruments. They are numerous and diverse in nature, from political commitments to administrative and technical. A central depository would also suggest that non-legally binding instruments have greater importance than other policy documents.

It is established Government practice not to routinely publish non-legally binding instruments and arrangements. To make all non-legally binding instruments public would detract from the flexibility that such instruments provide.

Individual departments are responsible for managing and retaining signed non-legally binding instruments. This is the practice in Australia and New Zealand. Each department should maintain its own records, draw important arrangements to Parliament's attention, and publish those that are in the public interest. It is a matter for each department to determine when and how to make public such instruments. The Government considers the existing Government policies on record keeping remain appropriate for handling non-legally binding instruments in line with other records of similar status. However, the Government will update its published guidance to encourage consistency and transparency in its approach.

Parliamentary scrutiny of non-legally binding instruments

22. **It is clear that NLBIs are already a significant part of how states manage relations between one another and make policy decisions internationally. Arrangements therefore need to be put in place for Parliament to be informed of new NLBIs and, if necessary, to scrutinise them. We would not expect routine and regular votes to approve NLBIs, but this does not diminish the obligation on ministers to assure themselves in reaching such agreements that they are acting in accordance with the will of, and with the confidence of, the House of Commons.** (Paragraph 95)

23. ***We further believe that if a request is made by a parliamentary committee or the Leader of the Official Opposition for a debate and vote on an NLBI, the Government should make time for this on the floor of the House. This practice should be set out in guidance to ministers and civil servants.*** (Paragraph 96)

24. **We recognise that, on occasion, there may be good reasons why the Government has to reach NLBIs in secret, for instance in relation to matters of defence or national security. This does not diminish the Government's accountability to Parliament for**

placing obligations on the UK. ***As such, we recommend that when such an agreement is reached, arrangements are made to brief the appropriate House of Commons committee(s) in confidence, to facilitate a degree of scrutiny to take place, and provide the opportunity to express any concerns to the Government.*** (Paragraph 97)

Disagree.

The Government does not agree with the Committee's recommendation to introduce new arrangements for the parliamentary scrutiny of non-legally binding instruments and for votes of approval. It is important that the Government retains its ability to enter into non-legally binding political commitments and administrative arrangements with other states and organisations in the national interest. There has never been a convention in the UK whereby non-legally binding instruments are routinely submitted for parliamentary scrutiny, nor are we aware of any state or international organisation that handles its NBIs as if they were treaties.

The Government recognises that non-legally binding instruments can contain important policy content. They should therefore be treated in the same way as other expressions and statements of government policy. Where non-legally binding instruments raise questions of public importance, the Government already draws such matters to the attention of Parliament in a variety of ways. For example, this may be done through a Written Ministerial Statement. If Parliament so wishes, it may already call a debate on any non-legally binding instrument it considers of interest, in line with existing parliamentary procedures. Parliamentary committees may also hold departments to account for non-legally binding instruments within their subject areas. Arrangements exist for sharing sensitive information with such committees. However, the Government also has a responsibility to protect UK interests and ensure it does not release information that would undermine its international partners' legitimate expectations of confidentiality.

Parliamentary involvement in negotiation of treaties

26. **To carry out its constitutional function effectively in regard to the scrutiny of international agreements, it is not enough for Parliament to be involved only at the end of the process. A new approach to conceptualising international negotiations and international agreements needs to be developed in the UK whereby Parliament is involved throughout the process or 'lifecycle' of an international agreement, from early considerations on whether to open negotiations, through the negotiation rounds themselves, and on to indications of consent (for example, by way of a formal vote on whether or not to approve treaty), and then beyond, into implementation and review.** (Paragraph 110)

27. **Given our recommendation that all treaties need to be subject to a parliamentary process for the UK to indicate consent to be bound, it would be in a Government's best interest to consult and update Parliament regularly.** ***We recommend that a working practices agreement is reached between the Government and Parliament which would set out the arrangements for how Parliament will be informed of the progress of negotiations. Such an agreement should also set out that Parliament would normally be consulted on, and may be asked to approve, the setting of negotiating mandates.*** (Paragraph 111)

Disagree.

Given the profile and nature of FTAs, including their length and breadth of scope, the Government has already committed to publish negotiating objectives, a scoping assessment and a response to a public consultation/call for input ahead of entering into new FTA negotiations, as part of a suite of additional commitments contained in an exchange of letters between the Government and the Chair of the International Agreements Committee. For example, prior to the start of the trade negotiations with Australia and New Zealand, it published negotiating objectives, alongside an initial economic assessment. Furthermore, should the International Agreements Committee (IAC) or Business and Trade Committee (BTC) publish a report on negotiating objectives, the Government will consider that report and, should it be requested, facilitate a debate on the objectives, subject to the parliamentary time available. The Government has also shared information where appropriate with parliamentary committees on a confidential basis to keep them appraised of FTA negotiations. The Chief Negotiator will usually provide private and public evidence to the Committees and offer to brief them, in private, after each negotiation round. In addition, the Government will make relevant Senior level Civil Service experts available to brief the Committees on the technical detail of negotiations, where necessary, in private.

However, the Government believes a working practices agreement is neither necessary nor appropriate. The need for a treaty to deal with any particular policy issue and its likely scope are not necessarily clear from the beginning, with the start of a treaty process often ambiguous and the purpose of, or need for, a treaty emerging only as negotiations progress. However, the Government remains committed to the principles of transparency and positive engagement, while retaining ultimate discretion over the amount and detail of any information shared with Parliament on the progress of treaty negotiations. This needs to be considered on a case-by-case basis, finding a balance proportionate to the level of public interest. Where appropriate, the Government may provide such additional information as notifying Parliament of the opening of negotiations and updating on ongoing negotiations, via confidential or public briefings, written ministerial statements, letters or official-level meetings. Decisions on information provision will be considered by weighing the need for transparency and positive engagement with Parliament against a range of factors including: any confidentiality requirements of negotiations; third country concerns, or the UK's relationship with other states; and whether doing so could be detrimental to the UK's negotiating position.

The Government also does not agree that negotiating objectives for treaties should ordinarily be subject to parliamentary approval. As the Constitution Committee in the House of Lords advised in 2019, "this would impinge inappropriately on the Government's prerogative power and limit the Government's flexibility in negotiations". The Constitution Committee agreed with the Government's position in relation to CRaG, its report of 30 April 2019 (Paragraph 14) noting that: (a) existing parliamentary mechanisms, supported by the work of the designated treaties committee, should be sufficient to provide effective scrutiny; and (b) mandates for treaties should not be subject to parliamentary approval. These issues were considered during the passage of the Trade Act 2021, where amendments regarding Parliament's role in the objectives and mandate-setting process and pre-signature scrutiny were rejected by considerable majorities in the House of Commons.

Internal parliamentary arrangements

28. **The current arrangements in Parliament for the scrutiny of international agreements are not commensurate with their constitutional importance. The House of Lords has taken steps to address this constitutional lacuna with the establishment of the International Agreements Committee. By contrast, the scrutiny arrangements in the House of Commons are currently insufficient to carry out what is a core function of Parliament, namely the scrutiny of international agreements. This core function should be understood to include involvement in the mandate setting and negotiation phases, the ultimate approval of treaties, and holding the Government to account for their exercise of powers to negotiate and reach these agreements. The important work done by the International Trade Committee during its existence has demonstrated the vital nature of a strategic approach to the parliamentary scrutiny of treaties. Furthermore, we are of the view that the statutory changes we have recommended earlier in this report, requiring all treaties to be subject to parliamentary process and, in appropriate cases, expressly approved by the House of Commons, should result in a greater focus from committees on international agreements. It is clear that the House of Commons is well placed to use its existing subject specialism in the departmental committee structure to provide detailed policy-focused scrutiny of international agreements. However, we note that this may not be sufficient by itself.** ***We recommend that the Liaison Committee adds the scrutiny of international agreements to the core tasks of all relevant committees. To further support this aim, we call on the Government to bring forward a motion to amend the Standing Orders to add "scrutiny of relevant international agreements" to the remit of all relevant committees. Moreover, to ensure that scrutiny of international agreements is given the necessary attention in the House of Commons, we further recommend that a bespoke committee is established, along the lines of the International Agreements Committee in the House of Lords, to act as the focal point for such scrutiny and to lead on this scrutiny in the House of Commons.*** (Paragraph 133)

29. **Effective scrutiny of international agreements requires both policy expertise and expertise in international agreements and law.** ***We recommend that a review is carried out to consider whether and what additional resource is required to support effective scrutiny of international agreements in the House of Commons.*** (Paragraph 134)

Partially agree.

The Government agrees that a core function of Parliament is to hold the Government to account, including in relation to treaties. The Government recognises that departmental Select Committees have subject matter expertise that they may wish to apply to the assessment and scrutiny of treaties signed by their respective Government departments. However, the Government does not agree with the Committee's recommendations that would require Parliament to approve treaties and notes that how Parliament chooses to hold Government to account and carry out its statutory responsibilities for treaty scrutiny are matters for Parliament. The Government welcomes any efforts to ensure the UK has an efficient, sustainable process of scrutiny to support transparency and accountability in its treaty making. It will continue to engage with any committee tasked with scrutinising treaties in a constructive way. The Government has welcomed the scrutiny efforts provided by the IAC in the House of Lords, which provides a valuable scanning function. It is a matter for the House of Commons whether to introduce a similar function.

Involvement of devolved administrations in treaty making

8. **The UK Government carries out negotiations and enters into treaties for the whole of the UK. However, under the UK's devolution arrangements, day to day responsibility for areas of domestic policy which could be impacted by treaties often lies with the devolved institutions in Northern Ireland, Scotland and Wales. In these areas, consultation and coordination between the UK Government and devolved governments is done under the auspices of the Concordat on International Relations. This Concordat has not been updated since 2013. Since this time there have been significant developments in the field of intergovernmental relations; the devolution statutes themselves have changed, the UK has left the EU, and a new intergovernmental relations system has been established.** (Paragraph 38)

9. **While many of the principles in the Concordat on International Relations appear to us to continue to be the right ones, the Concordat itself clearly needs to be updated, and the cooperation that it facilitates must take place in earnest.** ***We recommend that the Concordat on International Relations be replaced or updated. This new or revised document should set out clear arrangements for timely and meaningful consultation with devolved institutions on the issue of treaties and clarify how the processes for reaching treaties interact with the recently revised IGR structures. The production of or update to this document should be prioritised, and the agreed arrangements published within six months of the publication of this report.*** (Paragraph 39)

18. **The negotiation and conclusion of treaties is a reserved matter. As such, devolved legislatures do not currently have a formal role in the scrutiny of treaties. However, many treaties, in particular following the UK's withdrawal from the European Union, may cover subject matters that touch on areas of devolved competence. It is important that the devolved legislatures are able to consider the impact of a treaty on these areas. We believe that adequate time should be available for devolved legislatures to conduct meaningful scrutiny of treaties that impact on areas of devolved competence. However, it is a matter for the devolved legislatures how they choose to carry out scrutiny and arrange their business, both in their committees and their chambers. We would, however, hope again that a practice might develop whereby the devolved legislatures carry out scrutiny, produce reports and hold debates on a treaty in sufficient time so that the views of the devolved legislatures can be taken into account when the House of Commons votes on whether to approve a treaty.** (Paragraph 71)

30. **How the devolved legislatures choose to carry out effective scrutiny of relevant aspects is a matter for them to determine. However, we believe that their scrutiny of international agreements which involve areas of devolved competence is important. As set out above, the need for this scrutiny to take place should be a consistent factor in the sifting committee's determination of the appropriate period for scrutiny of a treaty.** (Paragraph 136)

25. **We stress the importance of the UK Government consistently informing devolved governments when it reaches an NLBI that has implications for devolved competence, and for this to be indicated in the central repository recommended in paragraph 94 above. Furthermore, we would expect devolved governments to keep a record of all NLBIs that they reach with international partners and for these agreements to be notified to the Foreign, Commonwealth and Development Office for recording in the**

central repository held by the UK Government. It is a matter for those administrations to make arrangements with their legislatures regarding the monitoring and scrutiny of such agreements. (Paragraph 100)

Partially agree.

The Government recognises that the devolved governments have a strong interest in international policy making, both in relation to devolved matters and in reserved matters that may impact upon their interests. For that reason, UK Government departments have established means of engaging with the devolved governments in a timely manner, in line with the Concordat on International Relations.

The Government does not agree with the Committee that the Concordat needs to be updated. As the Committee notes, new arrangements with the devolved governments have superseded aspects of intergovernmental relations and how those are conducted, but many of the principles set out in the Concordat continue to be the right ones. The Review of Intergovernmental Relations (IGRR), published in January 2022, provides for structures of engagement to be established which supersede aspects of those set out in the 2013 Memorandum of Understanding and its underpinning Concordats, including supplementing those on international relations. The IGRR also set out certain arrangements on the issue of engagement on international issues:

> Recognising that international relations is a reserved competence, the importance of engagement on the UK Government's approach to international issues as it affects devolved responsibilities is embedded in the system. The IMSC [Interministerial Standing Committee] will consider cross-cutting and wider strategic international issues, with FCDO Ministers invited as necessary. This will be complemented by two internationally focussed IMGs, including the Trade IMG to discuss agreements with the UK's new trading partners, and an IMG for the UK-EU Trade and Cooperation Agreement. These forums are in addition to departmental IMGs who will consider international engagement and agreements where devolved competence is being considered. In relation to UK-EU meetings, UK co-chairs will consider attendance as part of the UK delegation. International engagement and agreements that fall outside the remit of the IMSC or a relevant IMG will be led directly by FCDO, either on a bilateral or multilateral basis where necessary.

The Interministerial Group for EU Relations and the Interministerial Group for Trade are two fora where portfolio ministers meet to discuss the Trade and Cooperation Agreement and FTAs respectively. These fora are in addition to the range of departmental interministerial groups (IMGs) that consider international engagement and agreements where devolved competence is being considered.

The Government remains committed to working constructively with the devolved governments to facilitate the effective implementation of our international obligations. UK Government ministers speak regularly with ministers from the Scottish and Welsh Governments through a variety of fora, and have begun establishing similar relationships with new ministers of the Northern Ireland Executive.

The importance of involving devolved governments is underlined in the FCDO's Guidance on Practice and Procedures. The template explanatory memorandum which accompanies treaties has been reinforced to ensure that it sets out clearly and in detail the consultations with the devolved governments and whether the treaty covers devolved matters, reserved matters with implications for the devolved governments or has no devolved implications.

It is for the lead department responsible for the negotiations to ensure that devolved governments are consulted and involved where necessary. FCDO is ready to facilitate and support this where necessary. Once the treaty is finalised the relevant lead UK department must formally notify the devolved governments of any new international obligations concerning devolved matters which it will be the responsibility of the devolved government to implement.

In relation to FTAs, the Department for Business and Trade (DBT) has built close relationships with colleagues in Wales, Scotland and Northern Ireland.

DBT officials hold regular discussions with devolved governments to ensure their views are understood from the outset of negotiations. Engagement with devolved governments takes place before and after negotiation rounds allowing UK negotiators to understand priorities for the devolved governments. Engagement with negotiators is supported by sharing negotiations text to allow for ongoing conversation on key issues throughout negotiations.

International relations, including the ratification and scrutiny of international treaties, are the responsibility of the UK Government. In carrying out this responsibility, the UK Government acts in the interest of all parts of the UK, including the nations of Scotland, Wales and Northern Ireland. The UK Government therefore works closely with the devolved governments to deliver international treaties that work for the whole of the UK and engages with the devolved governments when implementing international agreements in their respective devolved areas.

The Government agrees that the devolved legislatures should determine how they wish to scrutinise relevant aspects of a treaty themselves and it is for Parliament to determine how it wishes to engage the devolved legislatures in this exercise.

Each devolved government retains responsibility for any non-legally binding arrangements into which it enters and will maintain its own records of these instruments. The UK Government remains supportive of the principle that was set out previously in the Concordat on International Relations that the devolved administrations may, in cooperation with the FCDO, make arrangements or agreements with foreign national or sub-national governments or appropriate counterparts in international organisations, to facilitate cooperation 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.

Furthermore, the UK Government agrees that appropriate and consistent engagement with the devolved administrations on devolved implications deriving from proposed non-legally binding instruments between the UK Government and foreign states is necessary, and in keeping with the principles and practices set out in the IGRR.

Extension of treaties to Overseas Territories and Crown Dependencies

31. **We are encouraged by the evidence we received on the regular and effective discussion and consultation between both the Ministry of Justice and Crown Dependencies and the FCDO and the Overseas Territories with regard to treaties that could be extended to them.** ***We call on the Government to ensure that it notifies the new sifting committee - as well as Justice Committee and Foreign Affairs Committee where appropriate - when it is in discussion with Crown Dependencies or Overseas Territories on the potential extension of treaties to them when negotiating an agreement on their behalf, or when it has provided a letter of entrustment.*** (Paragraph 142)

32. ***We are satisfied that the existing conventions are strong enough to ensure that a treaty will not be extended to the Crown Dependencies and Overseas Territories without their consent. This consent should also be communicated to Parliament at the point where the Government seeks to extend territorial applicability to include one or more jurisdictions. The changes to require the Government to seek Parliament's approval for all treaties will mean that treaties which include, or are to be extended to, Crown Dependencies and Overseas Territories, would require the approval of the House of Commons. A convention should be established between Parliament and the Government whereby the House of Commons would not be called upon to approve a treaty or extension of a treaty solely relating to a Crown Dependency or an Overseas Territory when the relevant jurisdictions had not yet expressed their approval.*** (Paragraph 143)

Partially agree.

The UK is responsible for the international relations of the Crown Dependencies and Overseas Territories and unless expressly authorised to do so by the UK Government, the Crown Dependencies and Overseas Territories do not have the authority to become party to treaties in their own right. Instead, the UK can ratify treaties on their behalf by extending the territorial scope of its ratification of treaties to include them. This is normally done either at the time of ratification or at a later date.

The Government welcomes the Committee's recognition of the regular and effective consultation between the UK Government and the Crown Dependencies and Overseas Territories on treaty matters. The Government will continue to consult the Crown Dependencies and Overseas Territories when a treaty is being negotiated, or consideration is being given to extending the territorial scope of a treaty already adopted, which could apply to them. In the Joint Declaration made by the Overseas Territories and the UK and published in December 2023, the Government committed to further improving its processes for consulting and informing Overseas Territories regarding new international obligations.

When subjecting treaties for parliamentary scrutiny under CRaG, the Government will continue to provide in the explanatory memorandum information on the extension of treaty provisions to the Crown Dependencies and Overseas Territories and associated consultations. Treaties are not however required to be laid before Parliament if they have been negotiated and concluded by the government of an Overseas Territory or a Crown Dependency under authority given by the Government of the United Kingdom in a Letter of Entrustment.

Given the above, the Government does not believe it is necessary to notify any new sifting committee – as well as the Justice Committee and Foreign Affairs Committee where appropriate – when it is in discussion with Crown Dependencies or Overseas Territories on the potential extension of treaties to them, when negotiating an agreement on their behalf, or when it has provided a Letter of Entrustment. The Government does not agree that any new arrangement is required for treaties or treaty extensions relating to Crown Dependencies or Overseas Territories.