



HOUSE OF LORDS

International Agreements Committee

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The Rt Hon David Lammy MP
Secretary of State
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Dear David

REVIEW OF TREATY SCRUTINY

1. The House of Lords International Agreements Committee (IAC) was established in January 2020 with a remit to “consider and where appropriate report on (a) matters relating to the negotiation, conclusion and implementation of international agreements, and (b) treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010” (CRAG). It remains the only body in Parliament dedicated to treaty scrutiny. In its five years of operation the IAC has gained significant experience of the operation of CRAG and has decided to open an inquiry into the treaty scrutiny process and consider whether, in light of that experience, legislative or other reforms are required to make it more effective. On behalf of the Committee I would like to invite you to give oral evidence towards the end of the inquiry.

2. As a first step to help the Committee focus its inquiry, I invite the Government to respond in writing to some questions about its approach to the operation of CRAG and treaty scrutiny more generally. These questions would have been put to a Minister during the scheduled evidence session in June last year which had to be cancelled due to the dissolution of Parliament. The purpose in putting them to you now in writing is to clarify prior Government statements to Parliament in response to earlier Parliamentary inquiries by the IAC, the House of Lords Constitution Committee and the House of Commons Public Administration and Constitutional Affairs Committee (PACAC). We would also welcome confirmation that the Government intends to adhere to the commitments to enhanced scrutiny of free trade agreements made by the previous Government. Your answers will help us assess the Government’s current view on the effectiveness of the treaty scrutiny process and allow us to follow up, if necessary, at a later stage.

The importance of treaty scrutiny

3. We welcome that in past statements to Parliament, the previous Government underlined the importance of Parliamentary scrutiny as a fundamental check on the prerogative power of treaty-making. Most recently in its 2024 response to PACAC, the previous Government said: “*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".¹ We trust that you stand by this assessment.

4. Our Committee recognises that treaty-making is a matter for the Government under the Royal prerogative. We understand that the conduct of foreign relations, including treaty-making, requires a degree of confidentiality and that the Government needs to retain flexibility in negotiating treaties to allow it to reach agreements on the international plane in the national interest. Nevertheless, to enable Parliament to exercise its role of holding the executive to account in relation to the decisions it takes on treaties, which the Government has recognised is a fundamental constitutional check, the procedures governing Parliament's role must be fit for that purpose. The purpose of this inquiry is to review whether that is the case in light of the IAC's experience.

The Government's view of the role of the IAC

5. The IAC plays a unique role in Parliament in relation to the scrutiny of treaties. No other Parliamentary committee reviews treaties systematically and therefore the reports of the IAC are currently the principal means through which Parliament is able to hold the Government to account in this area. We were therefore struck by the comment in the Government's response to the 2024 PACAC Report that the IAC exercises "a valuable scanning function" in relation to treaties². This is a curious turn of phrase which conveys a cursory review. The use of this phraseology perhaps indicates that the Government clearly understands that the limits of the current CRAG framework make it impossible for Parliament in general, and the IAC in particular, to do more than undertake a fairly superficial degree of scrutiny in most cases.

(i) Does the Government stand by the previous Government's comment that the IAC exercises a "valuable scanning function" in relation to treaties? If so, please explain what is meant by a "scanning function" in this context.

(ii) Please explain how you consider that Parliament is able to hold the Government to account on treaties within the current CRAG framework.

Sufficiency of the 21-day scrutiny period under CRAG

6. Section 20 CRAG provides that the Government may not ratify a treaty before the expiry of 21 sitting days after the treaty has been laid before Parliament. If Parliament wishes to express its opposition to ratification in a particular case, a debate and vote must be held in the relevant House or Houses before the end of that period.

7. The House of Commons has no select committee focused on treaty scrutiny. In the House of Lords, it is the role of the IAC to scrutinise treaties presented to Parliament by the Government and to report the most significant of them to the House. IAC reports therefore play a crucial role in informing members of Parliament about the significance of new treaties, enabling them to form a view on whether the powers under CRAG should be exercised. In practice, the 21-day limit means that the IAC has very limited time to produce a report on a significant treaty, and there is little or no time for a debate.

8. The 21-day timescale also rules out in most cases the possibility of taking evidence about a treaty to inform the scrutiny process. In the IAC's experience, taking evidence has only been possible on

¹ [Government response to the PACAC report](#) at page 2

² [Government response to the PACAC report](#) at pages 7 and 12

a few occasions when either the treaty has been laid before a recess (thus giving extra time) or occasionally when the treaty text is available before it is laid, either because it is a multilateral treaty in the public domain or because the lead Department has supplied a copy of the treaty. However, there is no consistency in the approach across Government to providing Parliament with advance information.³

9. A further issue is that the allocation of time for a debate on a treaty is within the gift of the Government and is not always granted on request. In the House of Lords, the Government has generally been willing to accommodate a treaty debate within the CRAG period when requested by the IAC. However, there have been recent occasions in the House of Commons when a request for a debate on a treaty has been refused.⁴ In 1924, in the debate which established the so-called “Ponsonby rule” (the precursor of the current CRAG process), Sir Arthur Ponsonby, then an FCO Minister, stated that *“In the case of important treaties, the Government will, of course, take an opportunity of submitting them to the House for discussion within [the 21 day] period. But, as the Government cannot take upon itself to decide what may be considered important or unimportant, if there is a formal demand for discussion forwarded through the usual channels from the Opposition or any other party, time will be found for the discussion of the Treaty in question.”* It is striking that this commitment goes beyond what Governments have been prepared to concede in more recent times when the nature and subject matter of many treaties means that the case for scrutiny is more powerful than it was in 1924.

(iii) The origins of the current 21-day treaty scrutiny period date back 100 years and the process has changed little since. Paragraphs 6-9 above highlight some of the specific ways in which the current CRAG framework limits Parliament’s ability to scrutinise treaties effectively. Does the Government agree?

Extension of the CRAG scrutiny period

10. Section 21 CRAG enables the Government to extend the 21-day scrutiny period by laying a Ministerial statement. In response to previous inquiries the Government has expressed a willingness to consider extending the period⁵ but its response on the few occasions when an extension has been requested has not been positive. The IAC recently submitted a request for a 21-day extension for the expected treaty on the sovereignty of the Chagos archipelago. This request was made because of the evident political and legal significance of the treaty and the fact that ratification would not take place for several months after laying in Parliament due to the need for primary legislation. Despite acknowledging the importance of the treaty, the Government did not consider the treaty an appropriate case for any extension.

11. In response to the PACAC in 2024 the Government said: *“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.**”* (emphasis added)⁶. A similar statement was made in response to the IAC’s Chagos extension

³ The position is different for new free trade agreements where the previous Government committed to giving more time for scrutiny. This has enabled an evidence-taking process in those cases.

⁴ The Home Affairs Committee requested a debate on the Rwanda treaty. The Business and Trade Committee requested a debate on CPTPP.

⁵ See for example the [Government response to the Constitution Committee](#) in 2019 at page 8: “The Government will consider any request from a scrutiny committee to extend the sitting day period where there are compelling reasons, and sufficient time, to do so”.

⁶ [Government Response to PACAC](#) at page 6.

request: “The Government continues to be of the opinion that twenty-one sitting days is sufficient for Parliament to scrutinise **most treaties laid under CRAG**, including the BIOT Treaty.”⁷

(iv) We welcome the recognition that in some cases the 21-day CRAG limit may not be sufficient and that some treaties merit an extended scrutiny period. Please explain the factors which the Government takes into account when assessing whether to grant an extension to the CRAG period.

Advance sight of treaty texts

12. One of the main barriers to effective scrutiny of treaties is that in most cases the treaty text is not available to Parliament until the treaty is laid under CRAG. The text of multilateral treaties may be available from the website of the depositary (but the Government does not usually notify the IAC when the Government has signed a multilateral agreement). Bilateral treaties are rarely shared before laying.

13. In its response to the IAC’s first Working Practices Report the previous Government said it “believes the best way to ensure treaty scrutiny can take place within 21 sitting days is through engagement and information sharing. In this regard, the Government commits to continuing the regular constructive meetings between our officials. In addition, it may be appropriate in certain cases for the Government to share an initialled, or signed, treaty text with a relevant Select Committee and/or the IAC in advance of laying formally under CRAG, to help a Committee manage its scrutiny workload”.

14. That commitment has never been implemented except for new free trade agreements (FTAs) on which the IAC welcomes its regular engagement with the Department for Business and Trade. On a few other recent occasions Government departments have brought treaty texts to the attention of the Committee in advance of laying.⁸ The Committee is grateful to those departments (notably HMT and MOD) which have engaged proactively with us. Access to the treaty text prior to its laying in those cases under CRAG enabled the Committee to take evidence about the treaty from stakeholders and produce a more substantive report than would otherwise have been possible.

15. The advance sharing of texts is not necessary in all cases: many treaties which are laid under CRAG are routine and/or technical and the Committee now sifts these out to be noted without a report. But treaties which are politically or legally important merit a greater degree of scrutiny and this would be enhanced if the Committee had the time and ability to take evidence.

(v) Will the Government commit to sharing the texts of significant treaties with the IAC in advance of laying under CRAG?

(vi) Will the Government commit to notifying the IAC when the United Kingdom signs a multilateral treaty?

⁷ Letter from the Foreign Secretary to the Chair of the IAC dated 19 December 2024.

⁸ Examples of this include: UK/Japan Reciprocal Access Agreement (January 2023, MOD), UK/Swiss Agreement on Mutual Recognition in Financial Services (December 2023, HMT), the GCAP Agreement (January 2024, MOD).

Significant treaties: enhanced scrutiny

16. The one category of treaties for which the previous Government accepted that more time for scrutiny is justified is new free trade agreements (FTAs). An exchange of letters in 2022⁹ between Baroness Hayter of Kentish Town (as IAC Chair) and Lord Grimstone of Boscobel (as DIT Minister) confirmed a set of commitments to enhanced scrutiny of FTAs, including:

- publication of negotiating objectives
- written updates following each negotiating round
- public and private briefings by Ministers and Chief Negotiators
- time for scrutiny before laying under CRAG (3 months)
- commitment that the Government will “seek to accommodate” a debate, “subject to Parliamentary time”.

This flexibility in application of the CRAG process has allowed the IAC to conduct in-depth inquiries into the FTAs concluded with Australia and New Zealand and the CPTPP.

17. In response to the IAC’s first Working Practices Report in 2020, the previous Government justified the special treatment for FTAs as follows: *“The profile and nature of FTAs, including their length and breadth of scope, warrants the specific regime of engagement and information provision that DIT has developed. For other treaties, the Government is committed to information provision, proportionate to their importance and the level of public interest.”* However, our experience has been that the approach for other agreements has been in most cases to offer nothing beyond the bare CRAG minimum regardless of the degree of political significance or public interest in the treaty.

18. In 2019 the previous Government accepted that scrutiny of other treaties could be enhanced by providing information to Parliament at the outset of and during negotiations. *“Whilst the Government must retain ultimate discretion over the amount and detail of any information shared with Parliament, it recognises that alerting the relevant committee of the commencement of negotiation of a new treaty would enhance transparency and assist that committee in its role. ... For treaties in sectors [other than trade], there is a balance to be found and the system must retain flexibility, be proportionate to the level of public interest... The [Constitution] Committee rightly recognises that there are also circumstances where confidentiality is essential in treaty negotiation. This extends not only to the content of the negotiations, but at times to the very existence of negotiations themselves. However, as mentioned above, the Government can see merit in sharing information (broad treaty subject, other negotiating parties) with Parliament at the beginning of negotiations in many cases. Any decision to do so would be taken after having assessed the confidentiality requirements of the treaty or negotiations, and having considered any third country concerns.”*¹⁰ However, the Government’s support for this approach has not led to any practical action.

19. It is worth noting that the current trend in trade is away from full-scale FTAs and towards narrower sectoral agreements such as those recently seen on digital trade, financial services and the mutual recognition of professional qualifications and conformity assessment. It is likely that the Committee will be called on to scrutinise fewer FTAs going forward than in its first five years and this is borne out by recent experience. Since the start of 2022, only one FTA has been laid before Parliament (CPTPP) compared to seven sectoral trade agreements. The enhanced scrutiny arrangements recorded in the 2022 exchange of letters do not apply to such sectoral trade agreements. This raises the question of whether those commitments should be extended.

⁹ [Exchange of letters dated 19 May 2022](#)

¹⁰ [Government Response to the Constitution Committee](#) at page 6

20. Outside the field of trade, the Rwanda Treaty and the Agreement on Biological Diversity Beyond National Jurisdiction (BBNJ) are two recent examples of non-trade treaties of significance. Others coming down the track include the BIOT/Chagos agreement, the WHO draft treaty on Pandemic Preparedness and UN draft treaty on Plastics Pollution. The public interest in these treaties is high and there are strong arguments that treaties such as these merit an enhanced scrutiny process.

(vii) We assume that the Government intends to adhere to the commitments on enhanced scrutiny of FTAs as set out in the exchange of letters dated 19 May 2022 between Baroness Hayter and Lord Grimstone. Please confirm.

(viii) Do you agree that these commitments should also apply to sectoral trade agreements?

(ix) The Government accepted in 2019 that enhanced scrutiny arrangements could be appropriate for significant treaties with a high public interest and committed to greater transparency relating to the negotiation and conclusion of such treaties. Will the Government now commit to working with the Committee to reach agreement on how enhanced scrutiny of such agreements should be implemented?

FCDO's role in spreading good practice across Government and providing guidance to other departments

21. While FCDO have policy responsibility within Government for treaties, treaty-making is largely devolved to individual policy departments. The result is that practice between departments in engaging with Parliament is very variable. FCDO therefore have a key role in ensuring that departments understand Parliament's role in treaty-making and in sharing guidance and spreading best practice. In response to PACAC in 2024, the Government said it is *"updating its guidance on treaty processes to ensure consistent practice across Government."*

22. Our experience is that bureaucratic procedures can hinder the management of the IAC's scrutiny workload. For reasons which are unclear, it is often the case that treaties are laid in clusters, which means that the clock starts ticking on multiple treaties at the same time. For example, between 21 and 25 March 2024, six treaties were laid shortly before the Easter recess. By contrast, in the six weeks following the end of that recess until the dissolution of Parliament no treaties were laid. Members of the IAC secretariat have monthly meetings with FCDO counterparts to discuss forthcoming treaties. These are very helpful, but have their limitations since FCDO officials do not always seem to have the necessary information available from other departments enabling them to predict with certainty when treaties will be laid.

23. Under section 22 CRAG, the Government is required to provide an Explanatory Memorandum (EM) when it lays a treaty before Parliament. This is a vital piece of information to provide the context for scrutiny, especially when, as is the norm, there is no opportunity to take any evidence. The lead policy department is responsible for drafting the EM but this is done to an FCDO template, which was revised in 2020 following engagement with the IAC. The standard of EMs across departments is highly variable. Occasionally they are just very badly drafted. But a frequent issue is that the EM is long on unnecessary detail about the content of the treaty and short on political context, ie explaining the Government's assessment of the treaty and the reasons why ratification is in the UK national interest.

24. In response to PACAC the Government said: *“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.”* It is clear from the IAC’s recent experience that further work is needed to improve the quality of EMs.

(x) Is the Government willing to engage with the IAC and its secretariat to explore what more could be done across Government to (a) improve the quality of EMs and (b) provide better information about the pipeline of treaties due to be laid so that the IAC can plan its work?

25. I would be grateful for a response to this letter within one month from today’s date.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'The Rt Hon. the Lord Goldsmith', with a stylized flourish at the end.

The Rt Hon. the Lord Goldsmith KC

Chair of the House of Lords International Agreements Committee

cc: The Rt Hon Jonathan Reynolds MP, Secretary of State for Business and Trade
Lord Collins of Highbury, PUSS, FCDO
Baroness Chapman of Darlington, PUSS, FCDO